Tax & Regulatory Updates – Key developments of June 2023

DIRECT TAXATION: -

1. CBDT revises monetary limits for condoning delay in claiming refunds or loss carry forward:- *CBDT Circular no. 07/2023 dated 31 May 2023*

The Central Board of Direct Taxes (CBDT) vide Circular No.7 of 2023 dated 31 May, 2023, revises monetary limits for condoning delay in filing return of income claiming refund or carry forward of losses and set-off under Section 119(2)(b) by partially modifying its earlier Circular No.9/2015 and according to the that:

a. PCITs/CITs shall be vested with powers of acceptance or rejection of application where amount of claim is not more than Rs. 50 Lakh for any one AY,
b. CCITs shall be vested with the power of acceptance or rejection where such claim amount exceeds Rs.50 Lakh but is not more than Rs.2 Cr,
c. PCCITs shall be vested with powers where claim exceeds Rs. 2 Cr but is not more than Rs.3 Cr in any one AY;
d. Claims exceeding Rs.3 Cr shall be considered by CBDT.

The revised monetary limits shall apply with respect to applications/claims filed on or after Jun 1, 2023.

2. CBDT notifies amendment in Rule for Sec.80G provisional approval:- *CBDT's Notification No. 34/2023 dated May 30, 2023*

The recent amendment to Rule 11AA of the Income Tax Rules, 1962 specifically relates to the grant of provisional approval under section 80G of the Income-tax Act, 1961. It alters the effective date of the provisional approval, bringing about a notable shift in the timing of tax benefits associated with charitable donations. Previously, Rule 11AA stated that the provisional registration approval would be effective from the date of the provisional order. However, the new sub-rule (7) introduced in Rule 11AA modifies this provision.

According to the amendment, for applications made under clause (iv) of the first proviso to sub-section (5) of section 80G of the Income-tax Act, 1961, the provisional approval shall be effective from the assessment year relevant to the previous year in which the application is made as opposed to the previous provision which relied on the date of the provisional order. This change carries implications for the timing of tax benefits associated with charitable donations. It is essential to adapt to the revised provisions and align charitable contributions with the relevant assessment year to optimize tax advantages effectively.

3. Directorate (Systems) provides 21 days for Assessees to respond to Sec.245(1) intimation:- *Directorate of Income-tax (Systems) Instruction No. 1/2023 dated May 31, 2023*

Directorate of Income-tax (Systems) provides 21 days time limit to the assessees to respond to Section 245(1) intimations issued by Centralised Processing Centre (CPC), which comes into effect immediately. As per Section 245(1), where a refund is due or is found to be due to any person then AO or CIT or PCIT or CCIT or PCCIT may set off the refundable amount, wholly or in part, against the sum payable by such person after giving an intimation in writing to such person of the action proposed to be taken.

Time limit for AO was specified as 21 days in Instruction No.06/2022 dated Nov 28, 2022 by the Directorate (Systems). The Instruction also provides step-by-step procedure for the assessees to furnish response to intimation under Section 245(1) on e-filing portal. This Instruction is issued consequential to deployment of online response mode which has been in place for a sufficiently long period of time and with an intent to avoid delays in issuing refunds.

4. CBDT notifies e-Appeals Scheme, 2023 to operationalise appeals before JCIT(A):- *Notification No. 33/2023, dated 29-05-2023 and Notification G.S.R. 396(E) [NO. 32/2023/F.NO. 370142/10/2023-TPL], dated 29-5-2023*

To implement the functioning of the JCIT (Appeals), the CBDT has rolled out e-Appeals Scheme, 2023, effective from 29 May 2023. The Scheme enlists the scope, procedure to be adopted, penalty proceedings, rectification proceedings, and other provisions to ease the implementation are mentioned in the below paragraphs:

(a) Scope of the Scheme

The Scheme shall be applicable to such class of persons covered under section 246 of the Income-tax Act.

(b) Appeals Authority under the Scheme

The Joint Commissioner (Appeals) shall dispose of the appeals filed under this scheme.

(c) Allocation of Appeals

The Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems) shall devise a process to randomly allocate or transfer the appeals to the JCIT (Appeals).

(d) Procedure in Appeals

The Scheme delineates the comprehensive procedural requirements that the JCIT (Appeals) must adhere to which would include:

i. On assignment of appeal, the JCIT (Appeals) shall issue a notice to the appellant asking him to file his submissions within the prescribed time. He shall also issue a copy of such notice furnished to the Assessing Officer (AO).
ii. JCIT (Appeals) may obtain further information, document or evidence from the appellant or any other person. Further, may obtain a report of AO on the grounds of appeal or information, document or evidence furnished by the appellant.
iii. The appellant may file additional grounds of appeal to the JCIT (Appeals). The AO may request the JCIT (Appeals) to direct the production of any document or evidence, or the examination of any witness relevant to the appellate proceedings.
iv. The JCIT (Appeals) shall prepare a show-cause notice containing the reasons if he intends to enhance an assessment or a penalty or reduce the refund amount.
v. The JCIT (Appeals) shall prepare an appeal order stating the points for determination, the decision thereon and the reason for the decision.

(e) Penalty Proceedings

For non-compliance with any notice, direction or order, the JCIT (Appeals) is authorised to issue a show-cause notice for initiating the penalty proceedings. After considering all the relevant materials and response to the notice issued, he shall prepare a penalty order or drop the penalty proceedings.

(f) Rectification Proceedings

To rectify any mistake apparent from the record, JCIT (Appeals) can amend any order upon receiving an application from the appellant or the Assessing Officer. After examining the application, providing the opportunity of being heard by both parties and considering all the relevant material on record, he shall issue an order to rectify the mistake or reject the application.

(g) Appellate Proceedings

An appeal against an order passed by the JCIT (Appeals) shall lie before the Income Tax Appellate Tribunal.

(h) No Personal appearance under the Scheme

The Scheme clarifies that a person shall not be required to appear either personally or through an authorised representative in connection with any proceedings under this Scheme. However, a request for a personal hearing can be made, which can be conducted through video conferencing or video telephony.

Further, CBDT amends Rules 45/46A and Form 35 to enable filing of an appeal before JCIT(A). The notification introduces an amendment to facilitate the filing of appeals before the JCIT(A).

i. **In Rule 45: -** The word "Joint Commissioner (Appeals) or Commissioner (Appeals) shall be substituted.
ii. **In Rule 46A: -** The word "Joint Commissioner" shall be substituted.
iii. **In Appendix-II of Form No.35**: - The word "Joint Commissioner (Appeals) shall be inserted.

5. CBDT expands scope of Sec.56(2)(x) inapplicability for strategic disinvestment:- *Notification No. G.S.R. 403(E) dated 31.05.2023*

The CBDT has amended the income tax rules to facilitate strategic disinvestment of public sector companies by expanding the scope of a tax exemption on shares received below fair market value. The Income-tax (Eighth Amendment) Rules, 2023 issued on Thursday is effective from 1 April. As per this rule change, any person receiving shares from a public sector company below their fair market value is exempt from the purview of section 56(2)(x) of the Income Tax Act that makes such discounted share issues taxable in the hands of the recipient.

At present, this exemption applies to shares received by a person from the central or state government under strategic disinvestment. That covers only a share sale by the government and not necessarily a fresh issue of shares by the company. The amended provision makes the exemption applicable to "any movable property, being equity shares, of a public sector company or a company, received by a person from a public sector company or the Central Government or any State Government under strategic disinvestment." The rule change effectively expands the scope of the tax exemption.

Section 56(2)(x) of the Income Tax Act pertains to the taxation of gifts and other items received without consideration or for inadequate consideration. This can include money, property, shares, securities, and other assets. When such assets are received for no consideration or for consideration significantly less than their fair market value, they may be taxable under this section. The Income Tax Act also specifies the instances when this provision is not applicable.

6. Income tax heat on start-ups over unexplained funds:- *News Report*

Several start-ups, including prominent unicorns, have received tax notices issued by the Income Tax Department on some unexplained investments in them between FY19 and FY21. The unexplained investments are those for which the start-ups could not provide a satisfactory explanation about the nature and source of such funds. The tax notices were issued under section 68 of the Income Tax Act, which deals with cash credits in the books of accounts of a taxpayer. The tax authorities are also trying to check if there is any round-tripping of funds or money laundering involved in these unexplained investments.

The minimum investment in question is Rs. 100 crore, however, the total amount of unexplained investments could not be ascertained. The tax notices were served across the start-up spectrum - fintech, aggregators, and edtech. The government has extended the tax holiday scheme for start-ups until 31st March 2024, which means that start-ups incorporated before that date can avail themselves of tax benefits. The tax holiday scheme was earlier available for start-ups incorporated until 31st March 2023. The government has also increased the period of carryforward of losses on changes in shareholding in start-ups from seven years to 10 years.

https://www.business-standard.com/companies/start-ups/start-ups-gets-tax-notices-over-unexplained-investments-between-fy19-fy21-123052900836_1.html

7. CBDT notifies JCIT(A)/ Addl.CIT(A) posts across the country:- *CBDT office order no. 136/2023 dated 07 June, 2023*

The Central Board of Direct Taxes, vide office order no. 136/2023 dated 07 June, 2023, created the posts of Joint Commissioner of Income-tax (Appeals)/ Additional Commissioner of Income-tax (Appeals) across the country, with immediate effect. This is in continuation of the e-Appeals Scheme, 2023 notified by the board pursuant to the amendments made by Finance Act, 2023 in section 246 whereby JCIT(A) has been created and empowered to dispose of the appeals in specified cases.

8. CBDT clears air on deferment of appeal filing vis-à-vis prescribed monetary limits:- *CBDT circular no. 08/2023 dated 31 May, 2023*

Section 158AB provides that in a case of an assessee wherein the question of law arising from an order of the Joint Commissioner (Appeals), Commissioner (Appeals) or the ITAT for a particular assessment year is identical to a question of law that is pending before jurisdictional High Court or the Supreme Court in:

a. assessee's own case for any other assessment year; or
b. any other assessee's case for any assessment year,

Then to avoid duplicity of appeal before judicial forums, based on the communication from Principal Commissioner or Commissioner, the assessing officer shall not file an appeal before the jurisdictional High Court or the ITAT. The Assessing Officer shall instead file an application to the jurisdictional High Court or the ITAT that the appeal on the question of law in the assessee's case may be filed when the decision on such question of law, in the other case, becomes final. To decide whether the question of law is identical or not, the provision entrusts the same to the collegium, which shall comprise two or more Chief Commissioners or Principal Commissioners or Commissioners. The CBDT vide Order F.no.370133/13/2022-TPL, Dated 28-09-2022, has also specified collegium for the purpose of section 158AB.

Insertion of this provision has led to queries on monetary limits and exceptions applicable in respect of cases falling within the purview of Section 158AB. To provide clarity on the matter, the Central Board of Direct Taxes (CBDT) has issued the following guidelines:

Monetary limits:

The decision regarding the deferral of appeal(s)/grounds of appeal(s) will be based on the current monetary limits specified in Circular No. 17/2019 dated 08-08-2019 read with Board's letter dated

20-08-2018 and Office Memorandum dated 16-09-2019. Further, the following exception shall also apply:

a. If the judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' should be contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits.
b. If the judicial outcome in the 'other case' is not in favour of Revenue and is not accepted by the Department, an appeal against the same may be contested on merits in the 'other case' irrespective of the extant monetary limits to arrive at judicial finality.

Further, following terminology and scenarios on applicability of monetary limits has been stipulated by the CBDT under the captioned circular:

Terminology:

Yo: The current year in which appeal filing is under consideration;

Yf: The year in which the final decision on the question of law is received in favour of Revenue in the 'other case' ('other case' being as referred to in section 158AB of the Income Tax Act, 1961)

Scenarios on applicability of monetary limits:

a. In cases where only one ground is contested and where the tax effect is greater than the monetary threshold, the appeal may be deferred in the current year (Yo) in view of the provisions of Section 158AB. The appeal should then be filed in the year in which the final decision on the identical question of law is received in favour of Revenue in the year of final decision (Yf).
b. In cases where multiple grounds are contested and where the total tax effect of all the disputed grounds (i.e., grounds to which Section 158AB is applicable and otherwise) is greater than the extant monetary limits set by the CBDT for filing appeals and Section 158AB is applicable only to certain grounds, the guidelines for filing appeal are as follows:
    i. in Yo, filing of appeal on the grounds to which section 158AB is applicable may be deferred and appeal may be filed on the residual grounds.
a. in Yf, the appeal is to be filed on the grounds to which Section 158AB is applicable, irrespective of the monetary limit at that point in time.

9. CBDT notifies 348 as Cost Inflation Index for FY 2023-24:- *CBDT Notification No. 39/2023 dated 12 June 2023*

The Central Board Direct Taxes (CBDT) has notified the Cost Inflation Index for FY 2023-24 as 348, which comes into effect on 01st April 2024, and shall, accordingly, apply to AY 2024-25. Earlier, on 10th April 2023, CBDT notified 348 as the provisional Cost Inflation Index for FY 2023-24.

10. CBDT notifies various 'Advance Rulings' application forms:- *CBDT Notification No. 37/2023 dated 12 June 2023*

You would be aware that the Indian government has recently replaced the entire framework of Advance Ruling wherein the Authority was replaced by a Board for Advance Ruling which would comprise of the senior officials of Indian IRS as its members / judges. The CBDT vide Notification No. 37/2023 dated 12 June, 2023, amended Rule 44E of Income Tax Rules, 1962 and notified new Forms for obtaining advance rulings from the Board for Advance Rulings (i.e. Form Nos. 34C, 34D, 34DA, 34E and 34EA). Form No. 34C is for a non-resident applicant, Form No. 34D is for a resident in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident, Form No. 34DA is for residents in relation to a transaction which has been undertaken or is

proposed to be undertaken, Form No. 34E is for residents falling within such class or category of persons as notified by Central Government, and Form No. 34EA is for any other person obtaining an advance ruling.

11. CBDT incorporates 'majority rule' to address split in advance rulings:- *CBDT Notification No. 38/2023 dated 12 June 2023*

The CBDT, vide Notification No. 38/2023 dated 12 June, 2023 amended the e-Advance Rulings Scheme, 2022 to provide for a reference on point of difference between the Members of the Board for Advance Rulings (BAR) and decision by the rule of majority. By insertion of clause (v) in Para 6(C) of the Scheme, CBDT provides that in case the Members of a BAR differ in opinion on any point or points, then such BAR shall refer such point or points to PCCIT (International Taxation). The PCCIT (International Taxation) on such reference will nominate one Member from any other BAR and such points will be decided according to the opinion of the majority of the Members.

12. CBDT notifies JCIT(A)/ Addl. CIT(A) under jurisdictional CCITs pursuant to e-Appeals Scheme:- *CBDT Notification no. 41/2023 dated 14th June 2023*

CBDT vide notification No. 41/2023, issued on June 14, 2023, states that Joint Commissioners of Income Tax (Appeals) (JCIT(A)) or Additional Commissioners of Income Tax (Appeals) (Addl. CIT(A)) will now be subordinate to the Chief Commissioners of Income Tax (CCITs) within their respective jurisdictions. However, the notification clarifies that it does not require any income-tax authority to make specific assessments or dispose of cases in a particular manner, nor does it interfere with the discretion of CIT(A), Addl. CIT(A), or JCIT(A).

Notification No. 40/2023, also released on June 14, 2023, pertains to the implementation of the e-Appeals Scheme. Under this notification, the CBDT exercises its powers under Section 120 of the Income Tax Act to appoint 100 JCIT(A)/Addl. CIT(A) officers across the country will operate under the regional Principal Chief Commissioners of Income Tax (PCCITs) and jurisdictional CCITs.

An earlier Office Order dated June 7, 2023, had already established the creation of JCIT(A)/Addl. CIT(A) positions nationwide.

13. Mauritius seeks angel tax clarity:- *News Report*

The government of Mauritius plans to discuss the issue of angel tax exemption with Indian authorities. Minister of Financial Services, Mahen Kumar Seeruttun, intends to seek clarifications on why Mauritius was excluded from the list of countries exempt from paying taxes on investments in Indian startups. In May, CBDT issued a notification exempting 21 foreign jurisdictions, including Australia, France, Germany, and the US, from angel tax provisions. However, Mauritius, despite being a significant source of foreign direct investment (FDI) into India, was not included. Seeruttun highlighted that Mauritius has complied with all anti-money laundering provisions recommended by the Financial Action Task Force (FATF) and has implemented substance requirements for global financial services firms based in the country.

Further, the exclusion of Mauritius from the list may impact its attractiveness as an investment source for Indian startups, as funds may prefer to invest directly in India to avoid angel taxes. Mauritius seeks clarification on the selection of the 21 countries and emphasizes its compliance with

FATF recommendations. It is believed that the exclusion of certain jurisdictions, including Mauritius, is aimed at ensuring that only genuine investors benefit from angel tax exemptions.

14. Clarification on applicability of TCS on overseas credit card spends soon:- *News Report*

The CBDT is expected to issue a notification soon to address the concerns and confusion surrounding the applicability of TCS on such transactions. Currently, there is ambiguity regarding the levy of TCS on overseas credit card transactions as the applicability of TCS on credit card transactions made outside India has raised several questions, as credit card companies typically settle the transactions in foreign currency. The ambiguity has led to concerns among credit card users and stakeholders in the travel and tourism industry.

To address this issue, the CBDT is preparing to issue a clarification specifying the applicability of TCS on overseas credit card spending. This clarification is expected to bring clarity to the taxpayers, credit card companies, and banks, enabling them to understand their obligations and comply with the tax regulations appropriately and the CBDT is likely to provide details on the rate at which TCS will be levied, the threshold for its applicability, and the mechanism for collecting and remitting the tax.

https://www.business-standard.com/finance/news/clarification-on-applicability-of-tcs-on-overseas-credit-card-spends-soon-123060900595_1.html

15. CBDT amends IT Rules for new tax regimes, introduces Form 10-IEA:- *CBDT vide Notification no G.S.R. 452(E) [NO. 43/2023/F.NO. 370142/15/2023-TPL], dated 21 June 2023*

The Finance Act 2023 amends provision of section 115BAC, introducing reduced tax rates under the new tax scheme for the assessment year 2024-25 and onwards. The new tax scheme is now the default option for taxpayers, including Association of Persons (AOP), Body of Individuals (BOI), and Artificial Juridical Person (AJP).In order to implement the necessary changes, the Central Board of Direct Taxes (CBDT) has issued the Income-tax (Tenth Amendment) Rules, 2023. These rules modify existing rules 2BB, 3, and 5, and also introduce a new Rule 21AGA. A brief of the same is as under:

1. Amendments in Rule 2BB, 3, and 5:

Rule 2BB and Rule 3 pertain to exempt allowances and the valuation of perquisites. Previously, it was stated that individuals opting for sub-section (5) of section 115BAC would not be eligible for the benefits provided under these rules, subject to certain conditions. However, given that the new tax regime under section 115BAC is now the default option for taxpayers, the rules have been amended to specify that individuals whose income is taxable under section 115BAC(1A) will not be entitled to the benefits provided under these rules.

Additionally, Rule 5, which deals with depreciation, has been amended to impose a maximum limit on depreciation allowance. It is now stipulated that the rate of depreciation for any block of assets eligible for more than 40% depreciation is capped at 40%. Furthermore, if an assessee's income is chargeable to tax under section 115BAC(1A), the unabsorbed depreciation (attributable to the additional depreciation) will be allowed to be added to the written down value (WDV) of the block of assets as of April 1, 2023.

2. Insertion of new Rule 21AGA:

A) Opting out of the new tax regime:

A new rule, Rule 21AGA, has been introduced to outline the procedure for opting out of the new tax regime under section 115BAC. Starting from the Assessment Year 2024-25, individuals wishing to opt out of the new tax regime must submit Form 10-IEA on or before the specified due date under section 139(1) for filing of Income tax return. Form 10-IEA is to be filed by individuals with income from business or profession. Form 10-IEA must be submitted electronically, either with a digital signature or an electronic verification code. Individuals without income from business or profession can opt out of the new tax regime by selecting the option in the income tax return to be filed under section 139(1).

B) Re-entering the new tax regime:

If individuals wish to re-enter the new tax regime, they can do so by submitting Form 10-IEA if they have income from business or profession. For individuals without income from business or profession, they can re-enter the new tax regime when filing their income tax return.

16. Credit card users may have to declare forex transactions to banks for TCS levy:- *News Report*

The tax department is currently contemplating a proposal that would necessitate credit card holders to submit a declaration to the issuing entity within a designated timeframe. This declaration would outline the nature of expenses incurred in foreign currency for the purpose of Tax Collection at Source (TCS) levy. Discussions are underway between the Income Tax Department, the Reserve Bank of India (RBI), and other relevant stakeholders to establish a framework that distinguishes between expenses related to medical/educational purposes, subject to a 5% TCS, and expenses for other purposes, subject to a 20% TCS.

Further, it is anticipated that taxpayers may be granted additional time to file the declaration with their credit card issuer banks, specifying the nature of expenditures, starting from July 1, which marks the implementation of the new TCS proposal. The tax department is expected to release a comprehensive FAQ document, elucidating the procedures and modalities for the imposition of TCS at the specified rates.In response to public concerns, the finance ministry issued a clarification on May 19, stipulating that payments made by individuals using their international debit or credit cards up to Rs 7 lakh per financial year would be exempt from the LRS limits and, therefore, not attract any TCS. Further elucidation on this matter is eagerly awaited.

https://www.business-standard.com/finance/news/tcs-levy-credit-card-users-may-have-to-declare-forex-transactions-to-banks-123062000503_1.html

17. CBDT reduces AO's time of response on refund intimation to 21 days:- *CBDT Instruction No. 1/2023 dated 13 June 2023*

CBDT, vide Instruction No. 1/2023 dated 13 June 2023, reduces the time granted to the AO for responding to CPC on Section 245(1) intimation to **21 days** from the current 45 days period. Recently, Directorate (Systems) on 31 May 2023 issued an Instruction to provide 21 days to the Assessees for responding to Section 245(1) intimation. The period of 45 days was granted to the AOs as per CBDT Instruction No. 12/2013 dated 9 Sep 2013 which was pursuant to the directions issued by Delhi HC in the case of court on its "Own Motion vs. UOI" and as per the said instruction intimation u/s 245 is issued to the assessee by CPC in all cases where refund is determined but demands are outstanding to streamline the issuance or adjustment of refunds. In order to further minimise the delay in adjustment or grant of refunds, CBDT has issued this Instruction which comes into effect immediately.

18. CBDT specifies scope of recently notified e-Appeals Scheme, 2023:- *CBDT office order dated 16 June 2023*

CBDT, vide Office Order dated 16 June 2023, specifies the scope of e-Appeals Scheme, 2023 which excludes the appeals arising from: (i) assessment or penalty orders with over Rs.10 Lakh of disputed demand, (ii) faceless assessments or faceless penalty, (iii) post-search assessments, (iv) international tax cases, etc. Apart from the said exclusions, the Scheme covers all the appeals covered under Section 246 and/ or clauses (a), (b), (c), (ha), (hb) or (q) of Section 246A(1).

e-Appeals Scheme, 2023 shall not apply to the following appeals:

1. Appeals against assessment orders passed before Aug 13, 2020 under Section 143(3)/144, having disputed demand more than Rs.10 Lakh.
2. Appeals related to:
   - assessment orders passed with respect to cases pertaining to jurisdiction of Commissioner of Income-tax (Central).
   - assessments completed in pursuance of search u/s 132 or requisition u/s 132A.
   - assessments completed in pursuance of survey u/s 133A.
   - assessments where addition/variation in income is made on the basis of seized/ impounded material.
3. Appeals in cases pertaining to the jurisdiction of the Commissioner of Income-tax (International Taxation).
4. Appeals against the penalty orders passed before Jan 12, 2021 with respect to cases referred to in category para 1 above, with disputed demand of more than Rs. 10 Lakh.
5. Appeals against the penalty orders passed in categories (a) to (b) of para 2 and para 3.
6. Appeals against assessment orders passed on or after Sep 12, 2019 under the e-Assessment Scheme, 2019 or the Faceless Assessment Scheme, 2019 or under Section 144B.
7. Appeal against penalty orders passed on or after Jan 12, 2021 under the Faceless Penalty Scheme, 2021.

Meaning of Disputed Demand:

1. The difference between the tax on the total income assessed and the tax on the returned income, if

filed.
2. Tax on the total income assessed where no return has been filed.
3. For a penally order, the amount of penalty imposed under Chapter XXI and
4. Demand raised vide Section 156 notice or vide intimation issued under Section 143(1) or under Section 200A(1) or Section 206CB(1), in any other case.
5. Inclusive of applicable interest, surcharge and cess.

19. Using AI, Income-Tax department sends notices to tax evaders for fake donations:- *News Report dated 19th June 2023*

The Income Tax Department is currently reassessing income tax returns, giving particular attention to cases where deductions have been claimed for donations made to charitable trusts and political parties during FY18-19. Utilizing artificial intelligence, the Income Tax Department has identified individuals whose donation-to-income ratio appears to be skewed for the specified financial year. It is important to note that deductions ranging from 50 to 100 percent can be claimed for donations to political parties and charitable trusts under Section 80G. As per the report hundreds of notices are already issued to salaried individuals from March 20,2023 to June 10 this year.

https://www.moneycontrol.com/news/business/personal-finance/using-ai-income-tax-department-sends-notices-to-tax-evaders-for-fake-donations-10809011.html

20. ITAT notifies mode of hearing for 10 non-metro benches during Jul-Sep:- *ITAT notice no. U.O.F.25-Ad(ATD)/23 dated 16th June 2023*

Income Tax Appellate Tribunal (ITAT), by Public Notice dt. Jun 16, 2023, notifies dates of virtual and physical hearing during Jul'23 to Sep'23 months at 10 ITAT benches. The benches covered by the Public Notice are Agra, Dehradun, Jabalpur, Jodhpur, Cochin, Nagpur, Panaji, Patna, Ranchi and Guwahati.

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INDIRECT TAXATION

1. GSTN advisory on due date extension of GST Returns for the state of Manipur:- *GSTN Update dated 28th May, 2023*

The GSTN has issued advisory to inform that the late fee paid by the taxpayers of Manipur who have filed their GST returns for the period April 2023 before 27th May 2023, shall be credited into their ledgers. Notably, the Government has earlier extended the due date of filing GSTR-1, GSTR-3B & GSTR-7 of April-2023 tax period till 31st May 2023 for all the taxpayers having principal place of business in the state of Manipur.

2. GSTN issued new advisory on filing of declaration in Annexure V by GTA opting to pay tax under forward charge:- *GSTN Update dated May 31st, 2023*

he GSTN has issued new advisory to inform that the GTAs, who commence business or cross registration threshold on or after 1st April, 2023, and wish to opt for payment of tax under forward charge mechanism are required to file their declaration in Annexure V for the FY 2023-24 physically before the concerned jurisdictional authority. Such declaration must be filed within the timelines prescribed i.e. before the expiry of 30 days from the date of obtaining registration or 45 days from the date of application of registration whichever is later.

3. High Court granted statutory benefit of stay and directed petitioner to file appeal once tribunal is constituted:- *Flipkart India (P.) Ltd. v. Additional Commissioner of (Patna) taxmann.com 73 (AAR - GUJARAT)*

The assessee had intended to avail statutory remedy of appeal and benefit of stay of recovery of balance amount of tax against the order passed before the Appellate Tribunal. However, due to non-constitution of the Tribunal, the assessee was unable to avail such statutory remedies and therefore, it filed writ petition before the High Court to avail the statutory benefit of appeal and stay of recovery of balance amount of tax.

The High Court noted that the assessee can't be deprived of the benefit of stay due to non-constitution of the Tribunal. The Court noted that the department has already issued notification which provides that period of limitation for the purpose of preferring an appeal before the Tribunal under Section 112 shall start only after the date on which the Tribunal is constituted. Therefore, the Court held that the assessee must be granted statutory benefit of stay after depositing 20% amount of tax in dispute in addition to amount already deposited. The Court also directed the assessee to file appeal under Section 112 once the Tribunal is constituted and made functional.

4. GST is also leviable on amount reimbursed for fuel charges for providing motor vehicle hire services:- *Authority for Advance Ruling, Uttarakhand Uttarakhand Public Financial Strengthening Project, In re - [2023] 151 taxmann.com 5 (AAR-UTTARAKHAND)*

The applicant was receiving motor vehicle hire services including fuel charges from service providers. It entered into a contract with provider of services wherein liability to arrange

fuel and maintenance of vehicle, so deployed would lie with the service provider and the applicant would reimburse such expenses. It filed an application for advance ruling to whether service provider can charge GST on whole amount of bill or only on monthly rental excluding night charges and fuel on mileage basis.

The Authority for Advance Ruling observed that that motor vehicle hire services have integral component of running/ operating vehicle from one place to another for transportation. The actual transportation without fuel can't be possible. Hence, any reimbursement of expenses for providing vehicle hiring services under any head would be nothing but additional consideration for provision of services and it would attract GST on total value of bill. Therefore, it was held that the service provider would be liable to charge GST on whole amount of bill which in the instant case would be monthly rental and fuel charges on mileage basis.

5. Application for refund can't be rejected without giving an opportunity of hearing to applicant:- ***Knowledge Capital Services (P.) Ltd. v. Union of India - [2023] 150 taxmann.com 515 (Bombay)***

The petitioner was engaged in the business of providing information technology enabled services. It exported its services under a letter of undertaking without payment of integrated tax and claimed refund of the accumulated input tax credit on account of the export of services. The department rejected the refund claim on the ground that there were deficiencies in the petitioner's application. The petitioner filed writ petition against the rejection of refund and contended that no defect sheet was provided.

The High Court noted that once application for refund is made, it has to be processed by the department. If there is lacunae, the applicant is to be informed to remove the lacunae and to submit the claim after that; the application is to be considered for either grant or rejection of the refund. However, no application for refund should be rejected without giving an opportunity to the applicant of being heard. In the instant case, no hearing was given to petitioner before rejection of refund application which was contrary to proviso to rule 92(3) of Central Goods and Services Tax Rules, 2017. Therefore, it was held that the impugned order was liable to be set aside and application was restored.

6. Provisions of Section 13(8)(b) and Section 8(2) of IGST Act are legal, valid and constitutional:- ***Dharmendra M. Jani v. Union of India - [2023] 151 taxmann.com 91 (Bombay)***

The petitioner was engaged in providing marketing and promotion services to customers located outside India. It was providing services only to the principal located outside India and in lieu thereof receiving consideration in convertible foreign currency from the principal located outside India.

The petitioner contended that the transaction entered into by it with the foreign customers would be one of export of service from India earning valuable convertible foreign exchange

for the country by an intermediary. However due to deeming fiction by Section 13(8)(b) of IGST Act, the place of supply shall be the location of the supplier of services which is in India and levy of CGST and SGST would arise. It filed writ petition assailing the constitutional validity of section 13(8)(b) of the IGST Act.

The coram of Division Bench of Bombay High Court was of two judges. One Judge of Division Bench Bombay High Court observed that Section 13(8)(b) of IGST Act not only falls foul of overall scheme of CGST Act and IGST Act but also offends Articles 245, 246A, 269A and 286(1)(b) of Constitution. Thus, as per one opinion, the provision is unconstitutional, other has expressed his disagreement and has rendered his separate opinion. Therefore, in view of such difference in opinion, the matter was placed before the Chief Justice for an administrative order and the Chief Justice referred these matters for the opinion of third Judge.

7. Interest is payable in case of inordinate delay in disbursing refund even if statutory provision is not available:- ***Sesame Workshop Initiatives (India) (P.) Ltd. v. Union of India - [2023] 151 taxmann.com 52 (Delhi)***

In the present case, the petitioner filed petition seeking interest on delayed refund. It was contended that refund of SGST was processed but the refund of CGST and IGST was not processed despite the refund order. Therefore, it was argued that interest would be payable as there has been an inordinate delay in disbursing the refund.

The High Court noted that in the instant case, refund of SGST was processed but the refund of CGST and IGST was processed after filing of writ petition. The interest would payable in case of inordinate delay in disbursing refund even in cases where statutory provision is not available for payment of interest. However, in the instant case, the Statute itself provides to pay 6% rate of interest in case of delay in processing refund by department. Therefore, the Court directed department to pay the interest at the rate of 6% per annum as expeditiously as possible.

8. Provisions of Section 13(8)(b) and Section 8(2) of IGST Act are legal, valid and constitutional:- ***Dharmendra M. Jani v. Union of India - [2023] 151 taxmann.com 91 (Bombay)***

The petitioner was engaged in providing marketing and promotion services to customers located outside India. It was providing services only to the principal located outside India and in lieu thereof receiving consideration in convertible foreign currency from the principal located outside India.

The petitioner contended that the transaction entered into by it with the foreign customers would be one of export of service from India earning valuable convertible foreign exchange for the country by an intermediary. However due to deeming fiction by Section 13(8)(b) of IGST Act, the place of supply shall be the location of the supplier of services which is in

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The third Judge held that that provisions of Section 13(8)(b) and Section 8(2) of IGST Act are legal, valid and constitutional and are confined in their operation to provisions of IGST Act only and same cannot be made applicable for levy of tax on services under CGST and State GST Acts. Therefore, the Chief Justice held that the provisions of Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional.

9. Interest is payable in case of inordinate delay in disbursing refund even if statutory provision is not available:- ***Sesame Workshop Initiatives (India) (P.) Ltd. v. Union of India - [2023] 151 taxmann.com 52 (Delhi)***

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10. GST Council to consider the Appellate Tribunal formation in July 2023:- ***News Report***

The 50th GST Council meeting, scheduled to be held on 11th July 2023, will consider constituting the GST Appellate Tribunal (GSTAT), a body meant to deal with tax disputes and lessen the burden on the highest judiciary. The meeting will be held in Delhi and will start off with celebrations addressing six years of GST and the landmark decisions taken in the past 49 meetings. In March, the Parliament passed the Finance Bill 2023, which included amendments pertaining to the formation of GSTAT.

GSTAT will have a "Principal Bench" in New Delhi, with the President, a judicial member, a

technical member (centre), and a technical member (state), and will also have state benches, in accordance with the population of the states concerned. States with a population of less than 20 million can have one bench, while those with 20–50 million can have two. The national appellate bench will look into disputes between the tax department and assessors over the "place of supply". However, it will not take up any appeal regarding divergent rulings by state appellate tribunals.

On matters related to indirect taxation on online gaming, sources from the ministry of finance shared that the council may discuss the report submitted by the group of ministers on online gaming. The official also shared that the matter is being discussed with officials from the Ministry of Electronics and Information Technology (MEITY) on the tax treatment that needs to be given to skill and chance gaming. At present, online gaming platforms pay 18 percent GST on platform fees and not on the full value, including prize money.

https://www.businesstoday.in/latest/economy/story/gst-council-to-consider-appellate-tribunal-formation-in-july-385644-2023-06-14

11. 2-Factor Authentication enabled for logging in to e-Way Bill and e-Invoice Systems:- *Press release*

For better security over the e-way bill portal and e-invoice portal, the National Informatics Centre has introduced 2-Factor Authentication for logging in to e-Way Bill and e-Invoice system. In addition to username and password, OTP will also be authenticated for login. It is provided that there are 3 different modes of receiving the OTP i.e. SMS, Sandes App and NIC-GST-Shield.

12. CBIC issues new guidelines for processing of applications for GST registration:- *Instruction No. 03/2023-GST dated June 14th, 2023*

The menace of fake registrations and issuance of bogus invoices for passing of fake ITC has become a serious problem and various modus operandi of obtaining such fake registrations have been detected by Central and State Tax administrations. To address this problem of fake registration and fake input tax credit, Instruction No.01/2023-GST dated 04.05.2023 has been issued for concerted and coordinated action on a mission mode.

Now, the CBIC has issued guidelines for strengthening the process of verification of applications for registration at the end of tax officers in a uniform manner. Immediately on the receipt of the application for the registration in the Task List of the concerned officer on ACES-GST application, the officer shall initiate the process of scrutiny and verification of the details filled by the applicant in the application for registration.

13. GSTN introduces E-Invoice Verifier App:- *GSTN Advisory*

The E-Invoice Verifier App developed by GSTN, has been introduced which offers a convenient solution for verifying e-Invoices and other related details. This app aims to

simplify the process of checking accuracy and authenticity of e-invoice for the convenience of taxpayers.

The app allows users to scan the QR code on an e-Invoice and authenticate the embedded value within the code. This helps in identifying the accuracy and authenticity of the e-Invoice. The GSTN also emphasizes that the e-Invoice Verifier App does not require any user login or authentication process. Anyone can freely scan QR codes and view the available information. This simplifies the user experience and makes it more convenient for users.

14. Agency banks collecting taxes through ICEGATE payment gateway to submit claims at Mumbai Regional Office:- ***CIRCULAR NO. CO.DGBA.GBD.NO.S295/31-12-010/2023-24, DATED 14-6-2023 by RBI***

RBI issued a master circular dated April 1, 2023 on the conduct of government business by agency banks - payment of agency commission. It consolidated important instructions on the subject issued by the Reserve Bank of India till March 31, 2022. The second Circular dated June 14, 2023 supersedes the earlier instructions on this subject given in the master circular dated April 1, 2022 regarding the reporting of certain transactions related to collection of indirect taxes through ICEGATE (CEP) payment gateway to Mumbai regional office (MRO).

The circular provides the guidelines for submitting the claims for agency commission by the agency banks that handle government business on behalf of RBI. The agency commission is paid by RBI for the transactions relating to revenue receipts and payments, pension payments, and any other item of work advised by RBI. The claims should be submitted in the prescribed format to CAS Nagpur for Central government transactions and to the respective Regional Office of RBI for State government transactions. The claims pertaining to GST receipt transactions, direct tax collection under TIN 2.0 regime, and indirect tax collection through ICEGATE payment gateway should be submitted to Mumbai Regional Office of RBI only, irrespective of the location of the agency bank. The claims for Central government transactions reported to CAS Nagpur will be settled at CAS Nagpur only. The claims should be accompanied by a separate and distinctive set of certificates signed by the branch officials, Chartered Accountants or Cost Accountants, as given in Annex 2, Annex 2A and Annex 2B respectively. The claims should also be accompanied by a certificate from ED / CGM (in charge of government business) confirming that there are no pension arrears or delays in crediting regular pension or arrears thereof.

15. Refund allowed once cannot be withheld based on appeal filed by Commissioner, Refund to be processed with interest:- ***G. S. Industries v. Commissioner Central Goods and Services Tax - [2023] 151 taxmann.com 162 (Delhi)***

In this case, the petitioner is engaged in the manufacturing of Handpump parts and applied for a refund of accumulated Input Tax Credit under the inverted duty structure. The Department initially acknowledged the petitioner's refund applications but later issued

deficiency memos and sought clarifications. The Department also asked for a Chartered Accountant's certificate confirming that the tax and interest were not passed on to others. The petitioner responded to the deficiencies, but the Department issued show cause notices calling for reasons why the refund applications should not be rejected. The petitioner responded to these notices, but the Department rejected the refund applications in a separate order.

The petitioner then filed an appeal against the rejection order, and the Appellate Authority allowed the appeals in a common order. Despite the favorable order at the Appellate Authority level, the refund has not been disbursed to the petitioner. The Department informed that they have decided to challenge the order-in-appeal and have passed an order setting out the grounds for the appeal. The court examined whether the benefit of the order-in-appeal can be denied to the petitioner and the refund can be withheld solely because the respondent decided to file an appeal. It was noted that no appeal was filed by the respondent, and there was no court order staying the order-in-appeal. The court concluded that the order-in-appeal cannot be ignored solely because the revenue considers it erroneous. The High Court directed the respondents to process the petitioner's claim for a refund along with the interest. However, it was clarified that the respondents can pursue remedies against the order-in-appeal, and if they succeed in their challenge, they can take action to recover any disbursed amount in accordance with the law.

16. Payment made through GST DRC-03 to be refunded if the proper officer failed to issue acknowledgment in GST DRC-04:- *Samyak Metals (P.) Ltd. v. Union of India - [2023] 151 taxmann.com 225 (Punjab & Haryana)*

The petitioner was engaged in business of manufacturing of Aluminium ingots. The business premises of petitioner was searched by the GST department. On basis of search, the petitioner was forced to deposit tax in lieu of Input Tax Credit including interest and penalty. It filed writ petition and the grievance was that even after depositing the amount, no GST DRC-04 had been issued by the department. The High Court noted that as per Rule 142 (2) of CGST Rules, 2017, when a payment is made in FORM GST DRC-03, proper officer must issue acknowledgment, accepting payment in FORM GST DRC-04. However, in instant case, the payment was made way back on 26.02.2021 but neither department had issued FORM GST DRC-04 nor issued any notice under section 74 (1). Therefore, the Court directed the department to return amount in question to petitioner along with simple interest at rate of 6% p.a. from date of deposit till payment is made.

17. GST evasion of ₹30,000 crore unearthed:- *News Report*

The GST authorities launched the crackdown on May 16, 2023 and uncovered tax evasion to the tune of Rs. 30,000 crore. The tax evasion was allegedly carried out by using stolen identities, including about 18,000 PAN and Aadhaar cards, to create shell companies and fake GST registrations.The shell companies and fake GST registrations were used to generate fake invoices and claim false refunds, without paying any tax or filing any returns. The GST authorities conducted searches at over 1,000 locations across the country and arrested seven persons in connection with the case. They also warned that more arrests are likely to be made.The GST authorities have also roped in other agencies, such as the

Income Tax department, Enforcement Directorate and Ministry of Corporate Affairs, to initiate separate actions against the accused persons and entities. The tax evasion of Rs. 30,000 crore is a major setback for the government, which introduced GST in 2017 with the aim of simplifying and streamlining the tax system. The government has said that it is committed to cracking down on tax evasion and improving the GST system.

18. Industry makes case for GST reforms, calls for amnesty scheme to resolve tax disputes:- ***News Report***

Indian industry feels the time has come to unleash the next phase of reforms in GST administration and has called for an amnesty scheme to resolve tax disputes. The GST administration has undergone tremendous transformation since its introduction on 01st July 2017. The survey found increased acceptance of the simplified tax regime among businesses, with 88% of MSMEs reporting a reduction in goods and services costs along with the optimised supply chains. The respondents to the survey acknowledged the need for introducing an amnesty scheme, essential for resolving existing tax disputes that had tied up business capital and government revenue. Further, it added that 70% of business leaders have reaffirmed their positive reliance on evolving aspects of GST law, a 10% increase from the preceding year.

https://www.telegraphindia.com/business/industry-makes-case-for-gst-reforms-calls-for-amnesty-scheme-to-resolve-tax-disputes/cid/1946572

19. Limitation period for filing appeal under section 107 of GST Act is not 120 days but four months:- ***Shri Ram Ply Product v. Additional Commissioner Grade 2 Appeal State Tax - [2023] 151 taxmann.com 282 (Allahabad)***

The petitioner filed writ petition challenging the order of Appellate Authority wherein the appeal was rejected. The Appellate Authority dismissed the appeal on the ground that it was filed beyond the maximum period. The petitioner contended that the appeals under Section 107 of CGST Act, 2017 were to be filed within 4 months of adjudication order and not 120 days.

The High Court noted that bare reading of the provisions of Section 107 of CGST Act, 2017 reflects that the time period is not 120 days, but it is four months. In the instant case, the appeal was filed on 121st day i.e. within four months as it would depend upon date on which Adjudicating Authority passed the order. The four months might be of 121 days or 122 days depending upon months. Therefore, it was held that the dismissal of appeal only on ground that it was beyond 120 days by computing four months as each month would be of 30 days was not proper. The Court directed to restore appeal and Appellate Authority was directed to proceed with appeal and decide it on merit in accordance with law.

20. Due date to file GSTR-1, GSTR-3B & GSTR-7 for April & May 2023 for State of Manipur extended till 30th June:- ***Notification No. 14/2023- Central Tax, Notification No. 15/2023- Central Tax and Notification No. 16/2023- Central Tax dated June 19th, 2023***

The CBIC has extended the due date of filing of GSTR-1, GSTR-3B & GSTR-7 for the month of April and May 2023 for taxpayers whose principal place of business is in the State of Manipur, till 30th June, 2023. In this regard, three notifications have been issued which shall be deemed to have come

into force with effect from 31st May, 2023. Earlier, these due dates were extended only for the month of April 2023 till 31st May, 2023.

21. Incentives received for promotion of sale of products purchased through distributors can't be excluded from taxable value:- ***Appellate Authority for Advance Ruling, Maharashtra MEK Peripherals India (P.) Ltd., In re - [2023] 151 taxmann.com 351 (AAAR-MAHARASHTRA)***

The appellant entered into agreement with foreign manufacturer to resell goods purchased through distributors. It filed an application for advance ruling to determine whether incentive received under agreement for completion of targets would be considered as trade discount or not. The Authority for Advance Ruling held that incentives received for promotion of sale of products purchased through distributors would not be treated as trade discount.

It filed appeal against advance ruling holding that incentive received from manufacturer under agreement would not be treatable as trade discount and the same would liable to be included in taxable value. The Appellate Authority for Advance Ruling noted that the agreement was entered between appellant and manufacturer and not with distributors. The incentive was directly received from manufacturer which was not specifically linked to invoices of goods purchased from distributors. Therefore, the prescribed conditions for exclusion of incentive as trade discount from taxable value were not satisfied as incentives received were separate from transaction with distributors. Thus, it was held that the incentives would not be treated as trade discount and can't be excluded from taxable value.

22. GST is leviable on movement of goods from one unit to another unit in different State on lease:- ***Appellate Authority for Advance Ruling, Maharashtra CHEP India (P.) Ltd., In re - [2023] 151 taxmann.com 390 (AAAR-MAHARASHTRA)***

The appellant was engaged in business of pallets, crates and containers. It filed an application for advance ruling to determine whether movement of equipment from appellant's Karnataka unit to Tamil Nadu unit on instruction from Maharashtra unit can be stated as mere movement of goods and not supply under section 7 of CGST Act, 2017.

The Authority for Advance Ruling held that the movement of goods from Karnataka unit to Tamil Nadu unit as per instruction of Maharashtra unit would amount to supply of leasing service and value shall be the amount charged by the recipient branch from the ultimate customers. It filed appeal against the order.

The Appellate Authority for Advance Ruling noted that in the instant case, the Karnataka unit was in possession of goods whereas Maharashtra unit was the owner and Karnataka unit had to give back goods on termination of contract of lease but due to requirement in Tamil Nadu unit, material was transferred to Tamil Nadu unit. Therefore, the Karnataka unit facilitated transport and acted as an agent in respect of said goods. Therefore, it was held that the movement of goods from Karnataka unit to Tamil Nadu unit as per instruction

of Maharashtra unit would amount to supply and shall be treated as supply of leasing service. Moreover, the Rule 28 of CGST Rules, 2017 would be applicable for present transaction as supply was between distinct persons. Thus, the value declared in invoice raised by Maharashtra unit on its unit in other States would be treated as taxable value as per second proviso to Rule 28 when recipient was eligible for full input tax credit.

23. High Court set aside order passed under section 73 which was not signed by concerned authority:- ***Marg ERP Ltd. v. Commissioner of Delhi Goods & Service Tax - [2023] 151 taxmann.com 345 (Delhi)***

The department issued a Show Cause Notice (SCN), calling upon the petitioner to furnish a reply along with supporting documents as evidence in support of its claim. The SCN didn't spell out the allegation which was required to be addressed by the petitioner.

The petitioner didn't file reply and the department issued order raising demand of Rs. 49,26,623. It filed writ petition and contended that the SCN didn't provide any reason and the impugned order was not signed by the concerned authority or officer.

The High Court noted that the impugned order was not signed by concerned officer. This issue was already covered by the decision of a coordinate Bench of this Court in Railsys Engineers Private Limited & Anr. v. The Additional Commissioner of Central Goods and Services Tax (Appeals-II) & Anr [2022] 141 taxmann.com 527 (Delhi) wherein it was held that show cause notice and consequential orders are required to be signed by concerned officer and same have to be affixed with digital signature if they are uploaded on GST portal. Therefore, following the above decision, it was held that the impugned order could not be sustained as it was unsigned. However, the Court noted that the department has already issued another notice pointing out that there was some differences/ excess ITC. Thus, the Court also directed the concerned authority to pass an order afresh after affording the petitioner, an opportunity to be heard.

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REGULATORY

1. RBI issues updated KYC Master Direction, to align instructions with recent PMLA amendments:- *RBI Notification No. RBI/2023-24/24 dated 28th April 2023*

RBI has issued a notification to update the Master Directions – Know your Customer (KYC) Directions, 2016, in order to align them with the recent amendments under PMLA Rules.

RBI modified the Master Directions to incorporate instructions in terms of the Government Order dated January 30, 2023, titled "Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (WMD Act, 2005)", as also to update certain instructions in accordance with FATF Recommendations.

Further, updates certain instructions as per FATF Recommendations and to refine certain extant instructions post review; Introduces a new term "Group", and revises the definition of "Non-Profit organizations" to mean any entity or organization, constituted for religious or charitable purposes referred to in clause (15) of section 2 of the Income-tax Act, 1961 (43 of 1961), that is registered as a trust or a society under the Societies Registration Act, 1860 or any similar State legislation or a company registered under Section 8 of the Companies Act, 2013.

A new definition of "Politically Exposed Persons" has been added to bring in the concept of "Shell Bank", as well as Video based Customer Identification Process (V-CIP), as an alternate method of customer identification with facial recognition and customer due diligence by an authorized official of the RE.

2. ICAI Issues Compendium of Social Audit Standards: *ICAI press release*

The Sustainability Reporting Standards Board (SRSB) of the ICAI issued a 282-pager Compendium of Social Audit Standards, applicable w.e.f. February 4, 2023, containing the text of all Social Audit Standards (SAS 100 to SAS 1600) on all the sixteen thematic areas along with the "Framework for Social Audit Standards", "Preface to Social Audit Standards" and "Glossary of Terms" at one place. The Appendix at the end of the Compendium specifies Niti Aayog's SDG India Index Indicators in a tabular format including SDG description, linkage with other SDGs and SDG targets.

Earlier on 14 January, 2023, the Sustainability Reporting Standards Board (SRSB) of the ICAI had issued the Social Audit Standards (SAS 100 to 1600). These Standards relates to the thematic area of "eradicating hunger, poverty, malnutrition and inequality" and aims to provide the Social Auditor with the necessary guidance in relation to independent impact assessment engagement of Social Enterprises engaged in eradicating hunger, poverty, malnutrition and inequality and the audit steps and procedures that should be applied while conducting the social impact assessment. The SAS sets out the minimum requirements to be followed while conducting impact assessment. Laws or regulations may establish additional requirements which should be followed, as applicable. In August 2022, the ICAI had issued the Exposure Draft of Compendium of Social Audit Standards, pursuant to SEBI's notification with regard to formation of Social Stock Exchange, wherein ICAI has been entrusted with the responsibility of being Self-Regulatory Organization for regulating the profession of Social auditors.

Following are the SAS issued:

- SAS 100 - Eradicating hunger, poverty, malnutrition and inequality

- SAS 200 - Promoting health care including mental healthcare, sanitation and making available safe drinking water
- SAS 300 - Promoting Education, Employability, and Livelihoods
- SAS 400 - Promoting Gender Equality, Empowerment of Women and LGBTQIA+ communities
- SAS 500 - Ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation
- SAS 600 - Protection of national heritage, art and culture
- SAS 700 - Training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports
- SAS 800 - Supporting incubators of social enterprises
- SAS 900 - Supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building
- SAS 1000 - Promoting Livelihoods for rural and urban poor including enhancing income of Small and Marginal Farmers and workers in the non-farm sector
- SAS 1100 - Slum area development, affordable housing and other interventions to build sustainable and resilient cities
- SAS 1200 - Disaster Management, including Relief, Rehabilitation and Reconstruction Activities
- SAS 1300 - Promotion of financial inclusion
- SAS 1400 - Facilitating Access to Land and Property Assets for disadvantaged Communities
- SAS 1500 - Bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection
- SAS 1600 - Promoting welfare of migrants and displaced persons.

3. MCA allows Companies to file form CSR-2 for FY 2022-23, by March 31, 2024:- *MCA Notification dated 31st May 2023*

The Ministry of Corporate Affairs (MCA) has made amendments to the Companies (Accounts) Rules, 2014 by adding a new proviso under sub-rule (1B) of Rule 12.

As per the amendment, for the financial year 2022-23, companies are required to file Form CSR-2 separately on or before March 31, 2024, after submitting Form AOC-4 or Form AOC-4-NBFC (Ind AS) as specified in the rules, or Form AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015.

The purpose of this amendment is to provide clarity and specify the timeline for filing Form CSR-2 in relation to the financial statements. By requiring companies to file Form CSR-2 separately after filing the specified forms for financial statements, the MCA aims to streamline the reporting process and ensure compliance with the CSR reporting obligations.

4. IFSCA constitutes independent Committee for development of precious metals ecosystem at GIFT-IFSC:- *Press Release dated 24.05.2023*

The International Financial Services Centres Authority (IFSCA) issued the Constitution of the Precious Metals Advisory Committee (PMAC). The following has been stated namely: -

- A comprehensive Gold Policy was announced to be formulated to develop gold as an asset class and establish a consumer-friendly and trade-efficient system of regulated gold exchanges in the country.
- The initial work on the conception of the India International Bullion Exchange (IIBX) was carried out by the IFSCA, based on inputs from the concerned departments/agencies of the Government of India, the World Gold Council (WGC), the India Gold Policy Centre (IGPC), industry/trade bodies, and GIFT City.
- The GIFT-IFSC was formally launched on July 29, 2022.
- While with the migration to ICEGATE, the volumes are expected to pick up to their potential, the IFSCA has been looking to take all necessary steps, on various fronts, to ensure wider participation and greater initial liquidity on IIBX. Going forward, IFSCA's aim is to enable IIBX to facilitate trading in a range of products, including derivatives and leasing products, in order to attract participants from around the world, including Indian and foreign banks.

In view of the scope and complexity of the tasks involved, an independent Precious Metals Advisory Committee (PMAC) has been constituted at IFSCA to obtain inputs on strategic and operational aspects, products, processes, and other relevant issues for the development of the precious metals' ecosystem at GIFT-IFSC in particular and the entire gold economy of India in general.

5. *IFSC's foreign institutions out of UGC, AICTE ambit:- Ministry of Finance notification dated 24 May 2023*

The Finance Ministry vide its notification dated 24 May 2023 directed that the University Grants Commission (UGC) Act and the All India Council For Technical Education (AICTE) Act shall not apply to the courses offered in Financial Management, FinTech, Science, Technology, Engineering and Mathematics by foreign universities or foreign institutions in the IFSC.

The notification clarifies that the regulatory ambit of the IFSCA shall be limited to terms and conditions of establishment including reporting requirements and administrative functioning of such foreign universities or foreign institutions while the regulatory framework of the respective home country shall apply in all academic matters such as curriculum, faculty, admission criteria or process, academic collaborations etc. Ministry further specifies that the recognition of courses offered by such foreign universities or foreign institutions in the IFSC, for the purpose of their equivalence in India, shall be subject to the requirements of Association of Indian Universities or other agencies vested with the responsibility of according academic equivalence to the qualifications awarded by such foreign universities or foreign institutions.

6. RBI floats draft Master Directions on cyber resilience for payment system operators:- *RBI draft Master Directions dated 02 June 2023*

RBI releases draft Master Directions on cyber resilience and digital payment security controls for Payment System Operators (PSOs), covering robust governance mechanisms for identification, assessment, monitoring and management of the cyber security risks, in an endeavour to migrate to latest security standards. The Directions shall also cover baseline security measures for ensuring

system resiliency as well as safe and secure digital payment transactions. The key extracts of the master directions are as under:

The draft Directions specifies that:

1. For the purpose of these Directions, Clearing Corporation of India Limited (CCIL), National Payments Corporation of India (NPCI), NPCI Bharat Bill Pay Limited, Card Payment Networks, Non-bank ATM Networks, White Label ATM Operators (WLAOs), Large PPI Issuers, Trade Receivables Discounting System (TReDS) Operators, Bharat Bill Payment Operating Units (BBPOUs) and Payment Aggregators (PAs) are considered as large non-bank PSOs.
2. Cross-border (in-bound) Money Transfer Operators under Money Transfer Service Scheme (MTSS) and Medium PPI Issuers are considered as medium non-bank PSOs.
3. Small PPI Issuers and Instant Money Transfer Operators are considered as small non-bank PSOs.

1. Governance Control:

- The Board of Directors (Board) of the PSO shall be responsible for ensuring adequate oversight over information security risks, including cyber risk and cyber resilience. However, primary oversight may be delegated to a sub-committee of the Board which shall meet at least once every quarter.
- The PSO shall formulate a Board approved Information Security (IS) policy to manage potential information security risks covering all applications and products concerning payment systems as well as management of risks that have materialised. The policy shall be reviewed annually.
- The PSO shall prepare a distinct Board approved Cyber Crisis Management Plan (CCMP) to detect, contain, respond and recover from cyber threats and cyber attacks. Relevant guidelines from CERT-In / National Critical Information Infrastructure Protection Centre (NCIIPC) / IDRBT and other agencies may be referred for guidance.
- The PSO shall define appropriate Key Risk Indicators (KRIs) to identify potential risk events and Key Performance Indicators (KPIs) to assess the effectiveness of security controls.
- The PSO shall, undertake a cyber risk assessment exercise relating to launch of new product / services / technologies or undertaking major changes to infrastructure or processes of existing product / services. Action points emanating from such assessment shall be implemented under the oversight of the CISO or equivalent executive.

2. Baseline Information Security Measures / Controls:

- The PSO shall maintain a record of all the key roles, information assets (applications, data, infrastructure, personnel, services, etc.), critical functions, processes, third party service providers and their inter-connections and classify and document their levels of usage, criticality and business value.
- All individuals having access to the IT environment of the PSO shall be assigned a digital identity, which shall be maintained and monitored till termination.
- Default authentication settings in systems / software / services shall be deactivated and changed before they are put to live environment.
- Access to systems and different environments (development, test, production, etc.) shall be based on need-to-have, need-to-know and based on the principle of least privilege.
- Necessary security controls, including centralised mechanism to whitelist / blacklist, shall be put in place to ensure secure use of removable media and portable devices (eg. smartphones, laptops, etc.).
- In case of remote / work from home situations, adequate precautions, including multifactor authentication mechanism, shall be in place.

- The PSO shall define and implement procedures that limit, lock and terminate system and remote sessions after a pre-defined period of inactivity.
- PSO shall have physical and environmental safeguards, with periodic testing, to protect access to its information assets from natural disasters and other threats
- The PSO shall put in place the measures specified to protect its network and systems from external threats.
- The PSO shall ensure that all its applications are subjected to rigorous security testing, such as source code review, VA, PT, etc., through qualified agencies at adequate frequency in authenticated mode.
- If the source code is not owned by the PSO, it shall obtain a certificate from the application developer stating that the application is free of vulnerabilities, malwares and any covert channels in the code.
- The PSO shall put in place necessary security controls for preventing infiltration into its network from vendor environments.
- The PSO shall develop and implement an Information Security Management System (ISMS) based on applicable standards.
- Application and database security controls shall focus on secure handling, storage and protection of data, in particular, Personally Identifiable Information (PII). Data in transit and rest shall be secured though either data or channel encryption or both.
- The PSO storing card (debit / credit / prepaid) data shall adhere to PCI-DSS guidelines and obtain PCI-DSS certification.
- Any change to system, technology, application, source code, etc., shall be managed using robust change management processes and after ensuring that overall integrity of the IT set-up is not compromised.
- The PSO shall put in place a Board approved incident response mechanism, which shall include provisions to promptly notify its senior management, relevant employees and regulatory, supervisory and relevant public authorities, of cyber incidents.
- The PSO shall develop a Business Control Plan based on different cyber threat scenarios, including extreme but plausible events to which it may be exposed. It shall be reviewed at least once a year and include a comprehensive cyber incident response, resumption and recovery plan, to manage cyber security events or incidents.
- The PSO shall arrange for periodic repeated training and awareness programs on information security issues for its employees and vendors managing its information assets.
- The PSO shall ensure that all payment transactions, including cash withdrawals, involving debit to the account conducted through electronic modes (bank accounts / debit cards / credit cards / PPIs, etc.) are permitted only by validation through multifactor authentication, except where explicitly permitted / relaxed.
- The PSO shall equip its servers with adequate security measures so that unauthorised / spoofed transactions are not done and the authentication process is robust, secure and centralised.
- The PSO shall put in place a fraud monitoring solution to identify suspicious transactional behaviour and generate alerts.
- The PSO shall put in place a mechanism to capture, analyse, store and archive audit logs in a systematic manner. Log messages shall provide relevant information to uniquely identify the user that initiated an action, the action and parameters of that particular action. Access to log data shall be provided on a controlled basis. Audit logs shall be preserved for a period of at least five years.

3. Digital Payment Security Measures / Controls

- The PSO shall facilitate its members / participants have mechanisms for online alerts based on various parameters such as failed transactions, transaction velocity, as well as in case of new account parameters (eg., excessive activity), time zone, geo-location, IP address origin (in respect of unusual patterns, prohibited zones / rogue IPs), behavioural biometrics, transaction origination from point of compromise, transactions to mobile wallets / mobile numbers / VPAs on whom vishing or other types of fraud are registered / recorded, declined transactions, transactions with no approval code, etc.
- While sending SMS / e-mail alert to customers, either by PSO or payment system participants, the following shall be ensured – (a) Bank account number / card number / other confidential information are redacted / masked to the extent possible. (b) Online payment transactions shall mention merchant name (not the payment gateway / aggregator) and amount; for fund transfers, name of the beneficiary and debit amount. The PSO shall ensure that the name is taken from the system of the entity maintaining the beneficiary account. (c) In cases where the OTP is a factor of authentication, the PSO shall ensure that the OTP is mentioned at the end of the notification message and the message shall also refer the specific transaction.
- The PSO shall provide a facility on its mobile application / website that would enable customers, with necessary authentication, to identify / mark a fraudulent transaction for seamless and immediate notification to the issuer of payment instrument. It shall also ensure facilitation of such mechanism by the system participants.
- The PSO providing / facilitating / processing mobile payment services / transactions shall comply with the following security practices and risk mitigation measures and shall also ensure that the participants in its payment system comply with these instructions:
    a. PSO shall put in place a mechanism to ensure that the mobile application is free from any anomalies or exceptions for which the application was not programmed.
    b. The PSO shall ensure that an authenticated session, together with its encryption protocol, remains intact throughout an interaction with the customer. In case of any interference or if the customer closes the application, the session shall be terminated, and the affected transactions resolved or reversed out.
    c. The PSO shall ensure device binding8 / finger printing of mobile applications with the device and SIM. In case the mobile application remains unused beyond a policy determined specified period, the PSO shall ensure device binding is performed again.
    d. The PSO shall ensure that an online session on mobile application is automatically terminated after a fixed period of inactivity and customers are prompted to re-login.
    e. The PSO shall, where applicable, set down the maximum number of failed log-in or authentication attempts after which access to the mobile application is blocked. There shall be a secure procedure to re-activate the access to blocked product / service. The customer shall be notified for failed log-in or authentication attempts, immediately.
    f. The PSO shall put in place a control mechanism, to identify any presence of remote access applications (to the extent possible) and prohibit access to the mobile payment application while the remote access is live.
    g. Whenever there is a change in registered mobile number or email ID linked to the payment instrument there shall be a cooling period of minimum 12 hours before allowing any payment transaction through online modes / channels.
- The PSO shall ensure that terminals installed at merchants for capturing card details for payments or otherwise are validated against the PCI-P2PE program; PoS terminals with PIN entry installed at the merchants for capturing card payments (including the double swipe terminals) shall be approved by the PCI-PTS program.

- The card networks shall facilitate implementation of transaction limits at card, Bank Identification Number (BIN) as well as at card issuer level. Such limits shall mandatorily be set at the card network switch itself. The card networks shall institute an alert mechanism on a 24x7x365 basis, to be triggered to the card issuer in case of any suspicious incident. Card networks shall ensure that card details of the customers are stored in an encrypted form at any of their server locations as well as their vendor(s)' locations, systems and applications. They shall also ensure that processing of the card details in readable format is performed in a secure manner.
- Prepaid Payment Instruments (PPI) issuers are encouraged to communicate OTP and transaction alerts with users in a language of their choice, including vernacular languages.
- The PPI issuers – banks and non-banks, shall put in place suitable cooling period for funds transfer and cash withdrawal after such funds are electronically loaded on to the PPI.

7. Draft Delhi Motor Vehicles Licensing of Aggregator (Premium Buses) Scheme, 2023:- *Government of National Capital Territory of Delhi Transport Department Notification dated 26 May 2023*

The Government of the National Capital Territory (NCT) of Delhi published a notification of the draft scheme for the premium bus service, which will encourage people from the middle and upper-middle classes to use public transport. The air-conditioned buses will have safety features such as CCTV cameras and panic buttons, and seats can be booked online through an app. It applies to all premium buses operating under a valid aggregate licence within the National Capital Territory of Delhi. The scheme outlines various definitions, eligibility criteria for obtaining an aggregator licence, and the procedure for granting and renewing the licence. It also released the draft Delhi Motor Vehicle Aggregator and Delivery Service Provider Scheme, 2023, for stakeholder and public comments and has invited the comments to be sent to the Principal Secretary-cum-Commissioner (Transport), Government of the NCT of Delhi, or on email at commtpt@nic.in or tptassta@gmail.com, within 30 days from the date of notification.

Under the scheme, a licence holder must operate and maintain a fleet of at least 50 premium buses within 90 days of obtaining the licence. The details of the routes should be provided to the public through a mobile or web-based app. The licence holder cannot modify or terminate any route without giving seven days' notice in advance, except in cases of advance bookings. The engagement of buses can be of different sizes (mini, medium, or standard) as per the All India Standard (AIS) 052 and the licence is valid for five years, and renewal is subject to satisfactory compliance with the scheme. No license fee shall be levied on electric buses to promote the clean transport option

The scheme also outlines the procedure for granting and renewing the licence, including the required documents and fees. It specifies the fee and security deposit for the licence, with different amounts based on the number of buses in the fleet. Regarding fare and ticketing, the licence holder can prescribe a fare structure and implement dynamic pricing, provided the base fare is not less than the peak fare of DTC AC buses. Passengers can be engaged only through mobile and web-based applications, and charges must be collected through electronic or digital payment modes.

The scheme imposes obligations on the licence holder, such as conveying trip details and passenger manifests through the application, ensuring safety and security measures, providing a rapid response mechanism for women passengers, and displaying driver and vehicle information inside the buses. The licence holder must also ensure compliance with standards for premium buses, including the installation of CCTV cameras. Non-compliance with the obligations may result in

fines. The scheme also mentions the obligation to pay an additional stand fee for using bus queue shelters.

8. SEBI proposes framework for additional-disclosures by FPIs, to prevent MPS-rules, Press Note 3 circumvention:- *SEBI's consultation paper dated March 31, 2023*

SEBI issues a Consultation Paper on framework for mandating additional disclosures from Foreign Portfolio Investors (FPIs) that fulfil certain objective criteria, for greater investor protection, and for fostering greater trust and transparency in the Indian securities market ecosystem. It states that some FPIs have been observed to concentrate a substantial portion of their equity portfolio in a single investee company/company group, and such concentrated investments raise the concern and possibility that promoters of such corporate groups or other investors acting in concert, could be using FPI route for circumventing regulatory requirements such as that of maintaining Minimum Public Shareholding (MPS).

Further, highlighting that the Govt. has recognised the inherent risks of opportunistic takeover/acquisition of Indian companies and therefore, issued Press Note 3 dated April 17, 2020, SEBI points out that while the Press Note is not applicable to FPI investments, the FPI route could potentially be misused to circumvent the stipulations of the Press Note and therefore, proposes that, to mitigate the risk of circumvention of these norms, enhanced transparency measures for fully identifying all holders of ownership, economic and control rights may be mandated for certain objectively identified high-risk FPIs that fulfil certain criteria. It suggests that high-risk FPIs holding more than 50% of their equity Asset Under Management ('AUM') in a single corporate group would be required to make additional disclosures, and provide granular data of all entities with any ownership, economic interest, or control rights on a full look-through basis, upto the level of all natural persons and/or Public Retail Funds or large public listed entities. Moreover, as to measures for preventing misuse of the FPI Route for circumvention of Press Note 3, it proposes that existing high-risk FPIs with an overall holding in Indian equity markets of over Rs. 25,000 cr. shall also be required to comply with additional granular disclosure requirements within 6 months, failing which the FPI should bring down its AUM below the threshold of Rs. 25,000 cr.

9. SEBI issued comprehensive guidelines for Investor Protection Fund, Investor Services Fund:- *SEBI vide circular no. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/81, dated 30 May 2023*

The SEBI has recently issued comprehensive guidelines regarding the Investor Protection Fund (IPF) and Investor Services Fund (ISF) at Stock Exchanges and Depositories. These guidelines have been introduced with the objective of enhancing investor protection and improving the functioning of IPF and ISF. The guidelines cover a wide range of aspects including the establishment and management of IPF, contributions to IPF by stock exchanges and depositories, utilization of IPF funds, deployment of funds, timelines for processing investor claims, and more. It aims to provide clarity on the role and responsibilities of stock exchanges and depositories in managing IPF and ISF.

The key points of the comprehensive guidelines for IPF and ISF are:

I. Investor Protection Fund

A. Constitution and Management of the IPF

- All stock exchanges and depositories are required to establish an IPF, which will be administered through separate trusts created for this purpose.
- The IPF Trust of stock exchanges and depositories will consist of five trustees, including three Public Interest Directors (PIDs), one representative from investor associations recognized by SEBI, and the Chief Regulatory Officer or Compliance Officer.
- The maximum tenure of a trustee (excluding the Chief Regulatory Officer or Compliance Officer) will be five years or as specified by SEBI.
- The stock exchange and depository will provide the secretariat for their respective IPF Trusts.
- The stock exchange and depository will ensure that the funds in the IPF are well segregated and that the IPF is not liable for any liabilities of the stock exchange and depository. The supervision of IPF utilization and interest/income will rest with the IPF Trust.

B. Contribution to IPF by Stock Exchange

- The stock exchange will make various contributions to the IPF, including 1% of the listing fees received on a quarterly basis, 100% of the interest earned on the 1% security deposit kept by issuer companies during public offerings, and penalties collected from trading members and listed companies for non-compliance with regulations.
- Other contributions include penalties collected for deficiency in modification of client code, default in pay-in for certain trades, default in pay-in by an investor in an Offer For Sale (OFS) transaction, and contributions based on transaction charges collected from exchange members.
- At least 70% of the interest or income received from IPF investments will be contributed to the IPF.
- The stock exchange may also make additional contributions as specified by SEBI.

C. Contribution to IPF by Depository

- The depository will make contributions to the IPF, including 5% of its profits from depository operations annually, fines and penalties recovered from Depository Participants (DPs) and other users, interest or income received from IPF investments, and funds from other reserves or funds of the depository.The depository may also make additional contributions as specified by SEBI.

D. Utilization of IPF and interest/income from IPF

- The IPF funds and any interest or income generated will be utilized for purposes such as meeting investment claims of defaulting trading members, providing interim relief to investors, promoting investor education and awareness programs, meeting legitimate claims of beneficial owners, and other purposes as prescribed or permitted by SEBI.
- At least 70% of the interest or income from IPF will be ploughed back to strengthen the IPF corpus, while the remaining 25% may be utilized by the stock exchange for investor education and awareness programs.
- The IPF Trust will disburse compensation from IPF to investors, subject to maximum limits set for individual claims

II. Investor Services Fund of Stock Exchanges

- The stock exchange shall allocate at least 20% of the listing fees received to the Investor Services Fund (ISF). This fund is intended to provide services to the investing public.
- The Regulatory Oversight Committee will have supervision and control over the contributions and utilization of the ISF corpus.
- The amount in the ISF, along with any interest generated from it, will be utilized for the purpose of providing services to the investing public. The specific services to be provided may be determined by the stock exchange, subject to any guidelines or directions issued by SEBI.

III. Applicability

- The provisions of this circular shall come into effect from the 30th day of its issuance.The existing provisions on Investor Protection Fund (IPF) and Investor Services Fund (ISF), as issued through various SEBI circulars, will be rescinded with effect from the date of implementation of this circular.

IV. Instructions to Stock Exchanges and Depositories

- Stock Exchanges and Depositories are advised to take necessary steps and implement the provisions mentioned above.
- They should make necessary amendments to the relevant bye-laws, rules, and regulations to facilitate the implementation of the circular.
- Stock Exchanges and Depositories should bring the provisions of this circular to the attention of market participants, including investors, and disseminate the same on their respective websites.

10. SEBI amends underwriting norms for public issues:- *Notification No. No. SEBI/LAD-NRO/GN/2023/130 dated 23.05.2023*

The words "Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018" will be substituted, everywhere by the words "Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014" appear in the ICDR Regulations. This is part of SEBI's second amendment to the ICDR Regulations.

The Regulator substituted regulation 40 and stated that that the issuer making an IPO must, prior to filing the prospectus, enter into an underwriting agreement with the merchant bankers or stock brokers registered with the Board to act as underwriters, indicating therein the maximum number of specified securities they shall subscribe to, to cover under-subscription in the offering.

Further, the regulator states that if the issuer conducts a public offering through the book-building process, the issue must be underwritten by lead managers and syndicate members. Additionally, the issuer must enter into an underwriting agreement with the lead manager and syndicate member prior to filing the prospectus, in which they must specify how many specific securities they will subscribe to in the event that bids are rejected. SEBI also emphasises that the draft offer document filed with the Board shall be made public for comments, if any, for at least 21 days from the date of filing on the websites of the issuer, the Board, stock exchanges where specific securities are proposed to be listed, and lead managers involved with the issue.

The regulators' final point is that before the prospectus or red herring prospectus is submitted with the Registrar of Companies, the details of the final underwriting arrangement, including the actual number of shares underwritten, must be disclosed and printed. If an excerpt from an industry study is disclosed in the offer document, the entire industry report must be included as part of the offer.

11. SEBI issues informal guidance clarifying on disclosure of 'outstanding borrowings' by listed entities:- *Informal Guidance No. SEBIIHO/DDHSIDDHS-P001/P/OW/2023/15712/1, dated 19.04.2023.*

The SEBI, in its reply to an informal Guidance sought by Eris Lifesciences Limited, has stated that outstanding long-term borrowings shall mean any outstanding borrowing with an original maturity of more than one year, except ECB and inter- corporate loans. The Applicant Company sought informal guidance on whether the term "outstanding borrowing" as specified in the Circular titled 'Operational Circular for the issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper' dated August 10, 2021 should be construed to mean only outstanding borrowings.

The Company stated that it would have borrowings of Rs 100 crores or above at the end of March 31, 2023. However, each of those borrowings shall either be:

a. Other than long-term borrowings. For instance, a working capital loan facility which is availed and repaid as needed over the tenure of such facility; or
b. Duly supported by the creation of suitable charges or other encumbrances over the assets of the listed entity for securing the repayment of principle and interest availed under the long-term borrowing.

Moreover, SEBI was of the view that the framework provided in Chapter XII of the Operational Circular pertaining to the mandatory requirement of the raising of a minimum of 25% of the incremental borrowing through issuance of debt securities shall be applicable to the following:

a. All entities that have their specified securities or debt securities or non-convertible redeemable preference shares, listed on a recognised stock exchange(s) in terms of SEBI (LODR) Regulations, 2015;
b. All listed entities that have an outstanding long-term borrowing of Rs 100 crore or above, where outstanding long-term borrowings shall mean any outstanding borrowing with an original maturity of more than one year and shall exclude external commercial borrowings and inter-corporate borrowings between a parent and subsidiary(ies); and
c. All listed entities have a credit rating of "AA and above" where the credit rating shall be of the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/support built and in case, where an issuer has multiple ratings from multiple rating agencies, the highest of such ratings shall be considered.
d. The applicability of the framework to the listed entities shall be determined on the last day of the financial year (i.e. March 31 or December 31).

In response to the query, the SEBI clarified that outstanding long-term borrowings should not only be construed as only those borrowings which are simultaneously long-term, unsupported and attracting credit rating requirements, as per the circular. Further, 'Outstanding long-term borrowings' shall mean any outstanding borrowings with an original maturity of more than one year, except ECB and inter- corporate loans.

12. SEBI publishes Model Tripartite Agreement between Issuer Company, Existing & New Share Transfer Agent: *Circular No.:- SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/79 dated 25th May 2023*

SEBI came out with a model tripartite agreement for the issuer company, existing share transfer agent and new share transfer agent. Under these norms, in case of any change or appointment of a new share transfer agent, the listed entity should enter into a tripartite agreement. The pact has to be signed by the existing transfer agent, the new share transfer agent and the listed entity.

In this regard, the board has come out with a **"model tripartite agreement has been prepared in consultation with Registrar Association of India (RAIN) and some issuer companies".**

According to the circular, Registrar and Share Transfer Agents (RTAs) and listed companies have been asked to publish the format of the tripartite agreement on their respective websites. RTAs have been advised to submit compliance with the direction by June 1, along with the link of their websites containing the format of the tripartite agreement.

They have also been asked to make necessary amendments to the relevant byelaws, rules and regulations, and operational instructions, as the case may be, for the implementation of the circular.

13. SEBI clarifies on applicability of ICSI Guidance Note on exemptions of certain transactions with related party:- *Informal Guidance No. SEBI/HO/CFD/P/OW/2023/22380; Dated: 31.05.2023*

The SEBI, in its reply to Informal Guidance, clarified that the validity of omnibus approval for Related Party Transactions (RPTs) given at the AGM shall not exceed 1 year. Further, any transactions specified by ICSI that are at variance with the express provision are not relevant for the purpose of granting an exemption.

Query raised by the Applicant Company-

The Applicant Company sought informal guidance regarding the validity of Related Party Transactions approval taken a few years back in an Annual General Meeting (AGM) for a multiyear agreement conversion of money payables into preferential equity shares.

In addition, a query was raised regarding the applicability of the ICSI guidance note on exemptions of certain transactions with related parties.

Provisions specified in LODR regulations

Regulation 23 read as follows:

"23. (2) All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity.

23. (3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely:

...e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year

23 (4) All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2) shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not."

Clarifications in SEBI circulars

The SEBI vide circular no. dated April 8, 2022 on 'Clarification on applicability of Regulation 23(4) read with Regulation 23(3)(e)' provides guidance on the aforementioned issue. The same is appended below:

4. In order to facilitate listed entities to align their processes to conduct AGMs and obtain omnibus shareholders' approval for material RPTs, it has been decided to specify that the shareholders' approval of omnibus RPTs approved in an AGM shall be valid up to the date of the next AGM for a period not exceeding fifteen months.

5. In case of omnibus approvals for material RPTs, obtained from shareholders in general meetings other than AGMs, the validity of such omnibus approvals shall not exceed one year."

SEBI's observations and reply-

The SEBI observed that as per the SEBI circular dated April 8, 2022, the validity of the omnibus approval for material-related party transactions shall not exceed 1 year. Further, the LODR Regulations clearly specified the types of transactions with related parties that are not to be considered related party transactions.

Therefore, any transactions specified by the Institute of Company Secretaries of India or any other authority in their suggested RPT policy, in so far as they are at variance with the express provision u/r 2 (1) (zc) of the LODR Regulations, are not relevant for the purpose of granting an exemption from the purview of Related Party Transactions.

14. Top 1000 listed entities to submit 'Business Responsibility and Sustainability Report' from F.Y.22-23:- *SEBI clarifies Informal Guidance No. SEBI/HO/CFD/P/OW/2023/22328, Dated: 31.05.2023*

The SEBI, in its reply to Informal Guidance, clarified that as per Regulation 34 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations 2015, starting from FY 2022-23, the top 1000 listed entities based on market capitalization are required to submit a 'Business Reporting and Sustainability Report' (BRSR) in the format specified by the Board.

Query raised by the Applicant Company -

The Applicant Company has been covered in the top 1000 listed entities based on market capitalisation as on March 31, 2021. However, it has fallen below such thresholds of the list of top 1000 listed entities based on market capitalisation as on March 31, 2022.

In this regard, the Applicant Company sought informal guidance regarding the applicability of the 'Business Reporting and Sustainability Report' for the financial year 2022-23. The following queries were raised -

(a) Whether the Company has to comply with the prospective amendments applicable to top 1000 listed entities based on market capitalisation as per regulation 3(2) of LODR?

(b) Whether the Company was liable to comply with reporting of 'Business Responsibility Report' or it has to comply with BRSR as per regulation 34?

Provisions specified in LODR regulations

Regulation 34 read as follows -

34. Annual Report

34 (1)....

(2) The annual report shall contain the following:

(a)....

(f) for the top 1000 listed entities based on market capitalization, a business responsibility report describing the initiatives taken by the listed entity from an environmental, social and governance perspective, in the format as specified by the Board from time to time:

Provided that the requirement of submitting a business responsibility report shall be discontinued after the financial year 2021-22 and thereafter, with effect from the financial year 2022-23, the top 1000 listed entities based on market capitalization shall submit a business responsibility and sustainability report in the format as specified by the Board from time to time:

Provided further that even during the financial year 2021-22, the top one thousand listed entities may voluntarily submit a business responsibility and sustainability report in place of the mandatory business responsibility report.

Further, Regulation 3(2) read as follows -

The provisions of these regulations which become applicable to listed entities on the basis of market capitalisation criteria shall continue to apply to such entities even if they fall below such thresholds." The sub-regulation has been made effective from May 05, 2021.

Provisions as per BRSR Circular:

In terms of the aforesaid amendment. with effect from the financial year 2022-2023, filing of BRSR shall be mandatory for the top 1000 listed companies (by market capitalization) and shall replace the existing BRR.

SEBI's observations

A perusal of the abovementioned provisions makes it clear that till the financial year 2021-2022, the top 1000 listed entities on the basis of market capitalization were required to submit a BRR in their annual report. Thereafter, from the financial year 2022-2023, such listed entities are required to submit a BRSR.

However, SEBI observed that the company was only among the top 1000 listed entities for the financial year ending on March 31, 2021. Therefore, their obligation under the aforesaid provisions was only limited to the submission of BRR for that specific financial year.

SEBI's reply:

In its reply, SEBI clarified that since the company was in the top 1000 listed entities only for the financial year ending on March 31, 2021 and not thereafter, it is not required to submit the BRR. Further, it is not required to submit the BRSR u/r 34(2)(f) of the LODR Regulations.

SEBI mandates stock brokers to undertake a minimum 10% of secondary market trades via 'Request for Quote' platform

Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/83; Dated: 02.06.2023

SEBI has issued norms for transactions in corporate bonds through the 'Request for Quote' (RFQ) platform by stock brokers. This is done in order to increase liquidity on the RFQ platform of stock exchanges and to enhance the transparency and disclosure pertaining to trading in the secondary market in corporate bonds.

As per the norms, stock brokers must undertake at least 10% of their total secondary market trades by value through RFQ platforms. This requirement will be increased to at least 25% of their secondary market trades by value by April 2024. The RFQ platform is a direct participation model where all participants trade in their own accounts.

15. MCA publishes FAQs on filing of Form 3 LLP:- *MCA Update dated 02nd June 2023*

MCA vide Notification dated June 2, 2023, substituted the LLP Form 3 (information with regard to Limited Liability Partnership Agreement and changes, if any, made therein) under Limited Liability Partnership (LLP) Rules, requiring disclosures of details of Director Identification Number (DIN) / Income Tax PAN / Passport number, Designated Partner Identification Number (DPIN) / Income Tax PAN / Passport number of the partner / nominee etc.

Pursuant to the said amendment in LLP Form 3, MCA issued FAQs for filing the form for:

Purpose 1 - filing information with regard to initial LLP agreement

Purpose 2 - filing information w.r.t. initial LLP agreement and for information with regard to changes in LLP agreement.

States that under Purpose 1, LLP are required to file Form 3 LLP with the Registrar within 30 days of the date of incorporation, indicating that LLPs are required to file Form 3 LLP under Purpose 1 for one time post incorporation. MCA clarifies that the downloaded data of Partners / Designated Partners cannot be edited for this Purpose.

Further, specifies that LLPs are required to Form 3 LLP under Purpose 2 with the Registrar within 30 days of any changes that are made in the LLP Agreement, for the purposes of change in business activities, change in partners, change in partner's contribution and ratio of profit sharing and change due to other reasons. Lastly, w.r.t. any data related issue, Ministry requests reaching out to MCA helpdesk or raise a ticket with MCA helpdesk with screenshot of the error / incorrect data and LLP Identification Number.

16. "Vivad se Vishwas" scheme for settling contractual-disputes to be implemented from July 15:- *Notification No. F .1 /7 /2022-PPD dated 29.05.2023*

The Government of India ("Government") had announced a one-time voluntary settlement scheme through the Union Budget 2023-24 to settle contractual disputes involving the Government of India or its undertakings. This voluntary settlement process would also be applicable to disputes that have resulted in arbitral awards or court decrees or court orders upholding arbitral awards (hereinafter collectively referred to as "Award") under challenge. The scheme is called Vivad se Vishwas II (Contractual Disputes). A draft scheme was published for circulation and was open for public comments till March 8, 2023.

After receiving feedback from the stakeholders, the Government has released the final draft of the Vivad se Vishwas II (Contractual Disputes) scheme ("Scheme"), vide its office memorandum dated May 29, 2023 issued by the Department of Expenditure of the Ministry of Finance. The date of commencement of the Scheme is July 15, 2023 and the last date for submission of claims is October 31, 2023. This deadline may be extended in the future but only under certain circumstances as discussed hereinafter.

Applicability of the Scheme:

I. Parties to the Dispute

For the Scheme to be applicable, one of the parties to the contract must be:

a. A ministry/ department (including the attached and subordinate bodies); or
b. An autonomous body of the Government; or
c. A public sector bank or a public sector financial institution; or
d. A central public sector enterprise ("CPSE"); or
e. A union territory without legislature (would exclude Delhi and Puducherry) and all agencies/ undertakings thereof; or
f. An organisation in which the Government holds 50% or more shares.

The above-mentioned entities have been referred to as "Procuring Entities" under the Scheme. The Scheme provides an exception to organisations in which the Government's shareholding is at least 50%. Such organisations can opt out of the Scheme at their discretion, with the approval of their board of directors. Further, though the Government has urged union territories with legislature and state governments to adopt the Scheme, they are not included in it currently.

The parties in dispute with the Procuring Entities are referred to as "Contractors" in the Scheme. It would also include CPSEs, etc., who are contractors to the Procuring Entities. The Scheme, as mentioned above, is voluntary and would apply to only those Contractors who wish to participate in it. For the Scheme to be applicable, the Contractor need not be an award-holder. Importantly, even where the Contractor is the award/ judgment debtor, it can opt to settle under this Scheme. So, if the Contractor has suffered an Award, it can reduce its liability by opting to settle under this Scheme.

II. Inclusions

The Scheme is applicable:

a. Only to contractual disputes including all kinds of procurement contracts, including procurement of goods, services and works.
b. 'Earning contracts', i.e. contracts where the Government receives money in exchange for goods, services, rights, etc., as well as contracts entered under the public private partnership arrangements.
c. Multiple disputes under a single contract can also be claimed under the Scheme separately.
d. Only to disputes involving monetary claims.

III. Exclusions

The Scheme does not apply in the following:

a. Awards/Court decrees that direct specific performance (either fully or partially) of the contract;
b. Disputes which have not resulted in an arbitral award up to 31.01.2023 or a court decree up to 30.04.2023;
c. International arbitration matters;
d. Interim orders issued by either the arbitral tribunal under any of the provisions of the Arbitration Act or by the court (under Section 9 of the Arbitration Act) are not considered awards eligible for settlement under the Scheme.
e. Matters where a settlement has been reached between the parties through a conciliation agreement.

As per the scheme announced by the Department of Expenditure, in cases of disputes where court or arbitral order has been passed, the settlement amount would be 85 per cent or 65 per cent of the amount awarded by the court or the arbitral tribunal respectively. In the draft scheme, the Expenditure Department had proposed that the settlement amount would be 80 per cent in case of court orders and 60 per cent in case of arbitral awards. The expenditure department has improved the final scheme after receiving feedback from stakeholders.

The scheme would commence from July 15, 2023, and claims can be submitted by October 31, 2023, said an Office memorandum of the Department of Expenditure. Apart from Ministries and Government departments, the scheme would apply to autonomous bodies, public sector banks and enterprises and all organisations, like metro rail corporations, where the Government of India has a 50 per cent stake.The scheme would cover cases where the court order has been passed till April 30, 2023, and arbitral award by January 30, 2023.

Under the scheme, it would be mandatory for Government departments to accept the settlement where the claim amount is Rs 500 crore or less. In case the claim amount by the contractor exceeds Rs 500 crore, the procuring entities will have an option not to accept the settlement request. The Vivad Se Vishwas II (Contractual Disputes) scheme is aimed at clearing the backlog of litigation, freeing lock-up funds, and improving the ease of doing business.

17. RBI expands scope of TReDS Guidelines, permits insurance facility for TReDS transactions:- *RBI Notification No. RBI/2023-24/37 dated 07th June 2023*

RBI proposed to expand the scope of Trade Receivables Discounting System (TReDs), vide RBI Governor's Statement on Developmental and Regulatory Policies dated February 8. 2023, by:

a. providing insurance facility for invoice financing,
b. permitting all entities/institutions undertaking factoring business to participate as financiers in TReDS, and
c. permitting rediscounting of invoices, so as to improve the cash flows of the MSMEs.

Accordingly, RBI permits insurance facilities for TReDS transactions, which would aid financiers to hedge default risks, subject to conditions. Apprising that Apex Bank issued the Guidelines for TReDS to ease constraints faced by Micro, Small and Medium Enterprises (MSMEs) in converting their trade receivables to liquid funds.

RBI, in order to overcome the inconvenience caused to MSME sellers and buyers as well as for better reconciliation, permits TReDS platform operators to undertake settlement of all Factoring Units (FUs), financed / discounted or otherwise, using the National Automated Clearing House (NACH) mechanism used for TReDS. To augment availability of financiers on TReDS platforms, Reserve Bank permits all entities / institutions allowed to undertake factoring business under Factoring Regulation Act and the rules / regulations made thereunder, to participate as financiers in TReDS.

Further, RBI lays down that TReDS platform operators may, at their discretion, enable a secondary market for transfer of FUs within the same TReDS platform, subject to the applicable provisions of RBI's Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, including the eligibility of transferor/transferee as specified in the said Master Direction;

Finally, stating that TReDS platforms facilitate transparent and competitive bidding by the financiers, RBI, in order to make the process more transparent, permits the platforms may display

details of bids placed for an FU to other bidders, however, specifies that the name of the bidder shall not be revealed.

https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12510&Mode=0

18. RBI issues framework governing compromise settlements and technical write-offs for RE's:- *CIRCULAR NO. RBI/2023-24/40 DOR.STR.REC.20/21.04.048/2023-24 dated 09.06.2023*

The Reserve Bank of India has issued various instructions to regulated entities (REs) regarding compromise settlements in respect of stressed accounts from time to time, including the Prudential Framework for Resolution of Stressed Assets dated June 7, 2019 ("Prudential Framework"), which recognises compromise settlements as a valid resolution plan. With a view to provide further impetus to resolution of stressed assets in the system as well as to rationalise and harmonise the instructions across all REs, as announced in the Statement on Developmental and Regulatory Policies released on June 8, 2023, it has been decided to issue a comprehensive regulatory framework governing compromise settlements and technical write-offs covering all the REs.

The provisions of this framework shall be applicable to all REs to which this circular is addressed and shall be without prejudice to the provisions of the Prudential Framework, or any other guidelines applicable to the REs on resolution of stressed assets. These instructions on operationalising the framework have been issued in exercise of the powers conferred by the Sections 21 and 35A of the Banking Regulation Act, 1949.

Regulated Entities (REs) shall put in place Board-approved policies for undertaking compromise settlements with the borrowers as well as for technical write-offs. The Board approved policy shall comprehensively lay down the process to be followed for all compromise settlements and technical write-offs, with specific guidance on the necessary conditions precedent such as minimum ageing, deterioration in collateral value etc. In respect of compromise settlements, the policy shall inter alia contain provisions relating to permissible sacrifice for various categories of exposures while arriving at the settlement amount, after prudently reckoning the current realisable value of security/collateral, where available.

The methodology for arriving at the realisable value of the security shall also form part of the policy. The compromise settlements and technical write-offs shall be without prejudice to any mutually agreed contractual provisions between the RE and the borrower relating to future contingent realizations or recovery by the RE, subject to such claims not being recognised in any manner on the balance sheet of REs at the time of the settlement or subsequently till actual realization of such receivables.

19. RBI releases statement on Developmental & Regulatory Policies relating to financial market, regulation & payment system:- *Press Release 2023-2024/365, Dated 08.06.2023*

The RBI has released the Statement on Developmental and Regulatory Policies. Now, it has been decided to put in place a regulatory framework for permitting default loss guarantee arrangements in digital lending. Detailed guidelines on the matter will be issued separately.

RBI to notify a comprehensive regulatory framework for stressed assets -

With a view to widen the scope of prudential framework for stressed assets, RBI has proposed to issue a comprehensive regulatory framework governing compromise settlements & technical write-off.

Bank to be allowed to set their own limits for Borrowing in call and notice Money Markets -

With a view to providing greater flexibility for managing the money market borrowings, it has been decided that SCBs can set their own limits for borrowing in Call and Notice Money Markets within the prudential limits for inter-bank liabilities prescribed by the Reserve Bank of India.

Expansion planned for the scope and coverage of e-RUPI vouchers -

Keeping in view the benefits for users and beneficiaries alike, RBI has proposed to expand the scope and reach of e-RUPI vouchers by permitting non-bank Prepaid Payment Instrument (PPI) issuers to issue e-RUPI vouchers and enabling issuance of e-RUPI vouchers on behalf of individuals.

RBI to streamline the Bharat Bill Payment System processes and membership criteria -

To enhance efficiency of the system and also to encourage greater participation, the process flow of transactions and membership criteria for onboarding operating units in Bharat Bill Payment System (BBPS) will be streamlined.

Enhancing the global reach and acceptance of RuPay Cards -

In order to expand payment options for Indians travelling abroad, it has been decided to allow issuance of RuPay Prepaid Forex cards by banks in India for use at ATMs, PoS machines and online merchants overseas.

20. RBI releases guidelines on default loss guarantee in digital lending:- *Press release dated- 09th June 2023*

As per the guidelines, a Regulated Entity may enter into DLG arrangements only with a Lending Service Provider (LSP) / other RE with which it has entered into an outsourcing (LSP) arrangement.

- DLG is a contractual arrangement between a regulated entity (RE) and DLG provider.
- RE refers to entities, like banks and NBFCs, which are regulated by the RBI.
- RE shall accept DLG in the following forms:-
    a. Cash Deposited with the RE
    b. Fixed deposits maintained with Schedule Commercial Bank
    c. Bank Guarantee in favour of the RE.
- RE shall ensure that total amount of DLG cover on any outstanding portfolio which is specified upfront shall not exceed 5% of the amount of that loan portfolio, RBI underscores that the RE shall invoke DLG within a maximum overdue period of 120 days.
- DLG agreement will remain in force shall not be less than the longest tenor of the loan in the underlying loan portfolio.

21. RBI Governor proposes to rationalize the licensing framework under FEMA, streamline BBPS Processes:- *Press release dated- 09th June 2023*

It has been decided to rationalize and simplify the licensing framework under FEMA for Authorised Persons to more effectively meet the evolving requirements of the rapidly expanding Indian

economy. It is expected to improve the efficiency in the delivery of foreign exchange facilities to various segments of users including common persons, tourists and businesses;

The Governor announces that it is proposed to streamline the process flow of transactions and membership criteria for Bharat Bill Payment System (BBPS) operating units, so as to further enhance the efficiency of the BBPS system and to encourage greater participation.

22. RBI Governor launches Financial Inclusion Dashboard "Antardrishti":- *RBI vide press release 2023-2024/346*

RBI Governor officially introduced a financial inclusion dashboard named 'Antardrishti', developed in partnership with the government and pertinent sector regulators. This dashboard serves the purpose of providing essential insights and monitoring the progress of financial inclusion through the collection of relevant data. Additionally, this tool enables the evaluation of the level of financial exclusion at a local level across the country, allowing for targeted interventions in such areas, according to the statement. Initially designed for internal use within the RBI, the dashboard aims to promote enhanced financial inclusion through a collaborative effort involving multiple stakeholders. The Reserve Bank has consistently championed financial inclusion by implementing various policy initiatives, and the launch of 'Antardrishti' is yet another stride in that direction.

Further, the Financial Inclusion (FI) Index was introduced by the RBI in 2021 to assess the extent of financial inclusion comprehensively. This comprehensive index incorporates information from the banking, investments, insurance, postal, and pension sectors. The FI-Index consolidates data from diverse facets of financial inclusion into a single numerical value, ranging from 0 to 100. A score of 0 represents complete financial exclusion, while a score of 100 signifies complete financial inclusion. As per the RBI, the FI-Index encompasses three main parameters with their respective weights: Access (35 percent), Usage (45 percent), and Quality (20 percent). Each of these parameters consists of multiple dimensions that are computed using various indicators.

23. Scheduled Commercial Banks (SCBs) can now set their own limits for borrowing in Call and Notice Money Markets:- *RBI Circular No. RBI/2022-23/38 FMRD.DIRD.02/14.01.001/2023-24, Dated 08.06.2023*

The RBI has decided to allow SCBs (excluding small finance banks and payment banks) to set their own limits for borrowing in Call and Notice Money Markets. Further, as in the case of term money market borrowing, scheduled commercial banks shall put in place internal board-approved limits for borrowing through Call and notice money markets within the prudential limits for inter-bank liabilities prescribed by the Department of Regulation. The instruction shall be applicable with immediate effect.

24. IFSCA fund management entities to submit fund-management operations information to IFSCA on half-yearly basis:- *IFSCA circular dated 31st May, 2023*

The International Financial Services Centre Authority (IFSCA) specifies reporting forms for Fund Management Entities (FMEs) in IFSCs thereby mandating the FMEs to submit information to the Authority in the formats prescribed at https://ifsca.gov.in/Downloadfile/Index on an half-yearly basis. The reports shall be submitted to the Authority by way of an email. The Authority stipulates that the half-yearly report to the Authority shall include:

a. Quantitative information about the fund management operations of the FME, which shall be submitted in an editable excel file.
b. A "Compliance Report", the signed copy of which shall be submitted as a scanned PDF file.

Authority further specifies that the first report under this Circular, corresponding to the period from October 01, 2022 to March 31, 2023 and shall be submitted by June 21, 2023 and the subsequent reports for each half-year period shall be submitted within 21 calendar days from the end of the half-year. Lastly, affirming that the Authority will continue to monitor the fund management industry in IFSC and may supplement / update the reporting formats, if so required. The Authority underscores that at the end of each half-year period, the FMEs shall access the latest reporting formats from the IFSCA website.

25. IFSCA modifies anti money-laundering, counter-terrorist financing guidelines:- *IFSCA Circular No. F. No. 939/IFSCA/FATF-C/PMLA/2023-24 dated 23rd May 2023*

IFSCA notifies modifications to the IFSCA (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022, in line with the recent amendments to the PMLA. Specifies that groups (as defined u/s 286(9)(e) of the Income-tax Act, 1961) are required to implement group-wide policies for the purpose of discharging obligations under the provisions of Chapter IV of the PMLA. The Authority highlights that where the client is a trust, the identification of beneficial owners shall include identification of the author of the trust, the trustee, the beneficiaries with 10% or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

Further, IFSCA stipulates that every Banking Company or Financial Institution or intermediary, as the case may be, shall register the details of a client, in case of client being a non-profit organization, on the DARPAN Portal of NITI Aayog, if not already registered, and maintain such registration records for a period of 5 years after the business relationship between a client and a reporting entity has ended or the account has been closed, whichever is later.

Where the client purports to act on behalf of a juridical person or individual or trust, the reporting entity shall verify that any person purporting to act on behalf of such client is so authorized and verify the identity of that person.

26. IFSCA Issues Consultation Paper on proposed amendments to IFSCA Banking Regulations:- *IFSCA Press release*

IFSCA releases Consultation Paper on the proposed IFSCA (Banking) (Amendment) Regulations, 2023 which inter alia proposes to permit IFSC Banking Units (IBUs) to be set up as a subsidiary company of the parent bank, seeks comments/suggestions on or before June 19, 2023. Highlighting that currently, the Banking Regulations, 2020 permit a parent bank to set up only one Banking Unit in an IFSC and only as a branch, the Authority remarks that "…it is felt necessary to enable banking business to be conducted in IFSC under the subsidiary model to complement and as an evolution from the branch mode.".

Moreover, stipulating that the liabilities of a Banking Unit, other than the deposits raised from individuals resident in India or outside India, shall be exempt from Cash Reserve Ratio or other such requirements, the Amendment Regulations states that a Banking Unit shall follow Know Your Customer norms, combating of financing of terrorism and other anti-money laundering requirements, including reporting requirements issued from time to time. Further, the Amendment

Regulations provide that the Parent Bank shall obtain a No Objection Letter from its Home Regulator regarding setting up of the Banking Unit in the IFSC as a subsidiary company of the Parent Bank, and that in case, where a Banking Unit is operating as a branch of the Parent bank with the Authority's permission, the Liquidity Coverage Ratio may be maintained by the Parent Bank. Lastly, the said Regulations specify that there shall be no centralised deposit insurance scheme for deposits of a Banking Unit operating as a branch of the Parent bank

27. Government designates a Special Court under Securities laws in Delhi:- *Notification No. F. No. 10/49/2017-PM dated 05th June 2023*

The Central Government, with the concurrence of the Chief Justice of Delhi High Court, designated the Court of Additional Sessions Judge-03, South-West District, Dwarka, Delhi, as a Special Court for the purposes of providing a speedy trial of offences under the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956, and Depositories Act, 1996. The Special Court will have jurisdiction over all matters relating to these acts in Delhi.

28. SEBI notifies guidelines relating to online processing of investor service requests and complaints by RTAs:- *Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/72, Dated 08.06.2023*

SEBI has proposed to digitize the process to submit various documents to RTAs by the holders of the physical security certificates. It is proposed to provide a mechanism for investors to lodge service requests and complaints online and thereafter track the status and obtain periodical updates. In Phase I, all RTAs servicing listed companies shall have a functional website & shall contain the prescribed information. In Phase 2, a common website shall be made and operated by QRTAs from 01.07.2024.

29. SEBI mandates upstreaming of all client funds received by Stock Brokers/ Clearing Members to the Clearing Corporations:- *Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/84, Dated 08.06.2023*

With a view to safeguarding clients' funds placed with stock brokers (SBs)/clearing members (CMs), the SEBI has mandated the upstreaming of all client funds received by SBs/CMs to Clearing Corporations (CCs). Further, as per the framework, no clients' funds shall be retained by SBs/ CMs on the end of day basis. The clients' funds shall all be upstreamed to CCs only in a form of either cash, a lien on FDR, or pledge of units of Mutual Fund Overnight Schemes. The provisions shall be effective from 01.07.2023.

30. SEBI allows Mutual Funds to participate in repos on Listed AA & above rated corporate debt securities/Commercial Papers:- *Circular No. SEBI/HO/IMD/IMD PoD-2/P/CIR/2023/85, Dated 08.06.2023*

Earlier, the SEBI vide circular no. CIR/IMD/DF/19/2011 dated November 11, 2011 read with CIR/IMD/DF/23/2012 dated November 15, 2012 allowed mutual funds to participate in repo transactions on corporate debt securities. Now in modification of the same, the SEBI has clarified that the mutual funds can participate in repos on Listed AA & above rated corporate debt securities, commercial papers and certificates of deposits. The circular shall be effective immediately.

31. New draft policy promises to level the ecommerce playing field:- *News Report*

The new e-commerce policy will bring parity between foreign and Indian marketplaces, and no such entity will be allowed to hold any equity in sellers selling or to sell their own private labels on their platform. The government is also framing rules for the sector under the Consumer Protection Act. The new policy and rules will ensure there is no direct or indirect sale of products to sellers registered on the e-commerce platform and will also ensure catalogues and search results are displayed in a fair and transparent manner to consumers.

India allows 100% foreign direct investment (FDI) in the marketplace model of e-commerce, where companies act as a technology platform connecting buyers and sellers. However, no FDI is permitted for the inventory-based model, where platforms sell directly to the consumer but cannot allow third-party vendors. The FDI laws also do not allow an entity to have equity participation in an e-commerce marketplace or its group companies or control over its inventory to sell its products on the platform.

The government has been keenly watching the evolving e-commerce space after several complaints from small retailers and traders alleging that e-commerce platforms are flouting the FDI norms and indulging in predatory pricing, giving preferential treatment to certain sellers in which they hold stakes. In 2020, the Department of Consumer Affairs in the Ministry of Consumer Affairs, Food, and Public Distribution issued the Consumer Protection (ecommerce) Rules under Section 101 of the Consumer Protection Act, 2019, which barred affiliated entities from selling on ecommerce platforms. This was opposed by both foreign-funded and Indian companies.

https://cfo.economictimes.indiatimes.com/news/policy/new-draft-policy-promises-to-level-ecommerce-playing-field/100978963

32. India seeks exemptions for MSMEs from EU's carbon tax: *News Report*

India is seeking an exemption for its Micro, Small, and Medium Enterprises (MSMEs) from the European Union's upcoming carbon tax, called the Carbon Border Adjustment Mechanism (CBAM). The tax is set to be implemented from October 1, and Commerce Secretary Sunil Barthwal expressed concerns that it would have a significant impact on domestic industries in certain sectors. These sectors include steel, cement, fertilizer, aluminum, and hydrocarbon products. During discussions with EU authorities, Secretary Barthwal highlighted the potential consequences for Indian industries, particularly MSMEs. He requested the possibility of a carve-out specifically for the MSME sector. Stakeholders' consultations were held last month to assess industry preparedness for CBAM compliance. Compliance will involve obtaining certificates from EU authorities, with data filing requirements beginning in October and the tax being imposed later.

In addition,a report by the think-tank GTRI indicates that starting from January 1, 2026, CBAM could result in a 20-35% tax on select imports into the EU. Additionally, from October 1, India's exports of iron, steel, and aluminum to EU countries will face increased scrutiny under the CBAM mechanism. India, along with other countries, has expressed concerns about CBAM at the multilateral level, addressing the issue with the World Trade Organization (WTO). In February, India submitted a paper to the WTO outlining its apprehensions regarding CBAM. Further, discussions between India and the EU are ongoing, and both sides have agreed to further explore the matter. The aim is to find a solution that considers the potential impact on Indian industries and

provides necessary exemptions or adjustments to ensure a balanced and fair approach to carbon taxation.

33. MCA notified that IBC Moratorium inapplicable where corporate-debtor enters into contracts under Oilfields Act:- *MCA Notification No. [F. No. Insol-30/1/2023-Insolvency-MCA] dated 14th June 2023*

Pursuant to Section 14 of the Insolvency and Bankruptcy Code, 2016 the Adjudicating Authority shall issue the Moratorium on the corporate debtor prohibiting it from entering into any contract or arrangement, any other adjudication proceedings etc. However, the moratorium cannot be issued for the transactions notified by the Central Government.

Central Government has notified that the provisions of Sec. 14(1) of the IBC shall not apply where the corporate debtor has entered into the Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases made under the Oilfields (Regulation and Development) Act, and rules made thereunder, and any transactions, arrangements or agreements, including Joint Operating Agreement, connected or ancillary to the transactions, arrangements or agreements aforementioned.

34. IFSCA releases Consultation Paper on proposed Payment Services Regulations:- *Consultation paper dated 13.06.2023*

International Financial Services Centres Authority has issued a Consultation paper on proposed IFSCA(Payment Services) Regulations, 20XX which inter alia lay down the process of regulating payment services and Payment Service Providers in IFSCs including licensing and authorisation of Payment Service Providers, seeks comments/suggestions by July 5, 2023. IFSCA suggests that any person seeking to provide payment services from IFSC shall require authorisation from the Authority, Further, the applicant desiring to provide more than one Payment Service in IFSC, shall submit separate applications for providing each Payment Service. Further recommends that on examination of the particulars furnished by the applicant and other information available with the Authority, if the Authority is satisfied that the requirements for authorisation are fulfilled, it shall issue authorisation certificate to the applicant to commence and carry on a payment service. The Regulations inter alia provide for:

- **Procedure for applying to provide a "Payment Service"-** The regulations lay down the process for applying to be a Payment Service Provider (PSP) and the types of authorizations that shall be granted for the Authority. The regulations also permit the Authority to revoke an authorization previously granted and also lay down the procedure for a PSP to surrender an authorization previously granted.
- **Types of authorisations-** Depending on the time of payment service/s sought to be provided and the requirement for holding customer funds, the regulations provide for two types of authorisations namely Licensing and Registration.
- **Providing initial capital-** Authorisation shall be granted once the applicant demonstrates ability to hold the necessary capital prescribed by the Authority.
- **Governance requirements**- The PSP shall comprehensively document its governance arrangements and keep such documentation up to date.
- **Exemption from the requirement of authorisation-** The Authority may exempt a payment service or a person proposing to provide a payment service from the requirement

for authorisation under the regulation subject to such conditions as it may deem fit to impose.

— **Safeguarding the funds of the users-** The PSP is required to safeguard the funds of the users received by it and also keep such funds segregated from the funds owned by the PSP.

Further, the PSP, if it so desires, may file an application with the Authority for surrender of its authorisation. Also, IFSCA recommends mandating the PSP to develop a management framework consisting of risk-management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by it while providing the payment service

35. RBI issues instructions to banks w.r.t. Sovereign Gold Bond Scheme 2023-24:- *Circular No. RBI/2023-24/44 IDMD.CDD.No.S650/14.04.050/2023-24, Dated: 15.06.2023*

The Govt. announced Sovereign Gold Bond Scheme 2023-24 on 14.06.2023. The Sovereign Gold Bonds will be issued in two tranches and the period of subscription would be June 19-June 23, 2023 and September 11-September 15, 2023. Subscription for the Bonds may be made in the prescribed application form Form A or in any other form as near as thereto, stating clearly the units (in grams) of gold and the full name and address of the applicant.

Further, every application must be accompanied by valid 'PAN details' issued by the Income Tax Department to the investors. The Receiving Officer shall issue an acknowledgment receipt in Form B to the applicant. Also, all online applications must be accompanied by the email id of the investors which should be uploaded on the Ekuber portal of the RBI along with the subscription details.

36. IBBI issues guidelines on inclusion of IPs in panel:- *IBBI Guidelines dated 12th June 2023*

IBBI issues the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2023.

Remarks that "The need was felt to prepare the panel of IPs in advance and share with the Adjudicating Authority (AA) to avoid administrative delays in appointment of the IP."; Specifying that an IP is eligible to be included in the panel, if there is inter alia no disciplinary proceeding, whether initiated by the Board or the Insolvency Professional Agencies, pending against IP. IBBI states that the Board shall invite expression of interest from IPs in Form-A by sending an e-mail to their email addresses registered with the Board and that the expression of interest must be received by the Board in said Form by the specified date.

Highlighting that the Board will prepare a common Panel of IPs for appointment as IRP, Liquidator, RP and Bankruptcy Trustee and share the same with the AA (NCLT and DRT) in accordance with these Guidelines, the Board emphasizes that in order to achieve the objectives of the Code, it is imperative to give due consideration to the experience gained by IP in handling assignments under the Code; Further, laying down the conditions for IPs, IBBI underscores that the AA may refer to or direct the Board for the appointment of IP including the recommendation of IP, from or outside the Panel and in such cases, the Board may accordingly take suitable action for the appointment of IP. Further, where 2 or more IPs get the same score, they will be placed in the Panel in the order of date of their registration with the Board, IBBI apprises that the panel of IPs prepared as per these guidelines will be effective from July 1, 2023 to December 31, 2023.

37. SEBI Issues Master Circular for Investment Advisors, restricts provision of advice on free-trial basis:- *SEBI Master Circular No. SEBI/HO/MIRSD-PoD-2/P/CIR/202389 dated 15 June 2023*

The Securities and Exchange Board of India (SEBI) issues a Master Circular for Investment Advisors (IAs), wherein the SEBI draws a client level segregation of advisory and distribution activities stipulating that existing clients, who wish to take advisory services, will not be eligible for availing distribution services within the group / family of Investment advisors. Similarly, existing clients who wish to take distribution services will not be eligible for availing advisory services within the group / family of Investment advisor. Market Regulator specifies 2 modes for Investment advisors to charge fees from their clients:

i. Assets Under Advice (AUA) mode, wherein, the maximum fees that may be charged under this mode shall not exceed 2.5% of AUA per annum per client across all services offered by Investment advisor.

ii. Fixed fee mode, wherein, the maximum fees that may be charged under this mode shall not exceed Rs. 1.25 lakh per annum per client across all services offered by Investment advisors.

SEBI restrains Investment advisors from providing advice on free trial basis without considering risk profile of the client, and directs Investment advisors not to provide free trial for any products / services to prospective clients and directs Investment advisors not to accept part payments (where some part of the fee is paid in advance) for any product / service. Regulator prohibits Investment advisors from using, in advertisements, superlative terms such as “Best”, “No. 1”, “Top Adviser”, “Leading”, “One of the best among market leaders”, etc., so as to provide any endorsement of quality or standing of the Investment advisors, however, lays down that factual details of awards received by the IA from independent organizations may be included.

Lastly, with respect to the framework for administration and supervision of IAs under IA Regulations, Regulator highlights that an entity granted recognition under the IA Regulations for the administration and supervision of IAs shall be designated as IA Administration and Supervisory Body (IAASB) having inter alia the responsibilities of supervisions of IAs including both on-site and offsite, grievance redressal of clients of IAs, monitoring of IAs by obtaining periodical reports, submission of periodical reports to SEBI etc.

38. SEBI Publishes Master Circular for Research Analysts, prohibits advertisements implying assured returns:- *SEBI Master Circular No. SEBI/HO/MIRSD-PoD-2/P/CIR/2023/90 dated 15 June 2023*

SEBI issues a Master Circular for Research Analysts (RA), wherein the SEBI stipulated the procedural guidelines for Proxy Advisors, specifying that Proxy Advisors shall formulate the voting recommendation policies and disclose the updated voting recommendation policies to its clients. Market Regulator advises all registered RAs to bring to the notice of their clients the Investor Charter by prominently displaying on their websites and mobile applications, further, as a one-time measure, Regulator directs those RAs not having websites / mobile applications, to send Investor Charter to the investors on their registered e-mail address. In order to enhance transparency in grievance redressal, SEBI mandates RAs to disclose on their websites / mobile applications all complaints including SCORES complaints received by them on a monthly basis, specifying that the information shall be made available by 7th of the succeeding month.

With respect to the advertisement code, SEBI prohibits the implication of any assures returns or minimum returns or target return or percentage accuracy or service provision till achievement of

target returns or any other nomenclature that gives the impression to the client that the recommendation of research report is risk-free and or not susceptible to market risks and or that it can generate returns with any level of assurance. Lastly, while observing that intermediary's resort to outsourcing with a view to reduce costs, and for strategic reasons, SEBI lays down that core business activities and compliance functions shall not be outsourced viz. execution of orders and monitoring of trading activities of clients in case of stock brokers.

39. SEBI amends AIF Regulations, introduces 'Corporate Debt Market Development Fund'

The SEBI has notified chapter III-C i.e., Corporate Debt Market Development Fund, of the SEBI (Alternative Investment Funds) Regulations, 2012 as under:

1) What is the Corporate Debt Market Development Fund?

The Corporate Debt Market Development Fund (CDMDF) will be a backstop facility for the purchase of investment-grade corporate debt securities in times of stress or in case of market dislocation. The purpose of this fund is to bring about confidence in the corporate bond market and boost secondary market liquidity.

2) Registration of Corporate Debt Market Development Fund

The CDMDF shall be constituted in the form of a Trust and the instrument of Trust shall be in the form of a deed duly registered under the provisions of the Indian Registration Act, 1908. Further, it shall apply for registration as an Alternative Investment Fund.

3) CDMDF shall be a closed-ended fund

The CDMDF shall be a close ended fund, with a tenure of fifteen years from the date of its first closing. Further, the tenure may be extended with the prior approval of the Board. Also, the fund shall be wound up with the prior approval of the Board.

4) Investment in the Corporate Debt Market Development Fund to be made through 'units'

The units of the CDMDF shall be offered to the AMCs as defined under the SEBI (Mutual Funds) Regulations, 1996 and the specified debt-oriented schemes of mutual funds.

Further, the investment by the AMCs and the specified debt-oriented schemes of the mutual funds shall also be in accordance with the SEBI (Mutual Funds) Regulations, 1996.

5) Manager or sponsor will have a continuing interest in CDMDF

The Manager or Sponsor shall have a continuing interest in the CDMDF of not less than five crore rupees in the form of investment in the fund but such continuing interest shall not be through the waiver of management fees.

6) Eligibility criteria for purchase of corporate debt securities by CDMDF during market dislocation

During periods of market dislocation, the CDMDF shall purchase corporate debt securities from the specified debt-oriented schemes of mutual funds which meet the following eligibility criteria:

- Corporate debt securities shall be listed and have an investment grade rating;
- The residual maturity of such securities shall not exceed five years on the date of purchase;
- Securities where there is no material possibility of default or adverse credit news or views.

7) Investments by CDMDF during other than market dislocation period

During the other than market dislocation period, the Corporate Debt Market Development Fund shall invest in liquid and low-risk debt instruments and undertake any other activity related to the corporate debt market.

Further, the CDMDF shall not invest in the securities of companies incorporated outside India. Also, investment in any one investee company shall not exceed 5 % of its fund capital at the time of investment.

8) Disclosure norms for CDMDF

The portfolio of the Corporate Debt Market Development Fund shall be disclosed to the unitholders on a fortnightly basis. Further, the Net Asset Value shall be disclosed to the unitholders on a daily basis.

9) Steps to be taken to comply with the governance mechanisms

- The CDMDF shall appoint a trustee company.
- The Board of directors of the trustee-company and the Manager of the CDMDF shall be appointed with the prior approval of the Board.
- The trustee company shall not engage in any activity other than acting as a trustee of the CDMDF, except with the prior written consent of the Board:
- Two-thirds of the members of the board of the trustee company shall be independent directors and shall not be associated with the Sponsor or the Manager.
- No person shall initially or any time thereafter be appointed as a director of the trustee company without the prior approval of the Board.
- An audit committee of the trustee company shall be constituted to review compliance with the provisions of placement memorandum.

10) Governance Committee of the CDMDF

- The manager of the CDMDF shall appoint a Governance Committee.
- The Governance Committee, jointly with the board of the Manager and trustee company, shall approve the policies of the CDMDF.
- The Governance Committee shall supervise the activities of the CDMDF, especially relating to management of conflict of interest.
- The Governance Committee shall have oversight on management of asset liability mismatches during times of market dislocation.

11) Impact of the CDMDF

One of the key impacts of the CDMDF is the boost in confidence it brings to the corporate bond market. By providing a mechanism to support the purchase of investment-grade corporate debt securities, the fund helps instill trust among investors, encouraging their participation in the market.

This increased confidence can lead to improved liquidity in the secondary market, as investors are more willing to buy and sell corporate debt securities. Further, the registration of the CDMDF as an Alternative Investment Fund in the form of a Trust ensures proper governance and regulatory oversight.

40. SEBI amends LODR norms regarding filling of KMP vacancies, continuation of Directors:- *Notification dated 14 June 2023*

The SEBI on 14.06.2023 notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023. The amendments are aimed at strengthening corporate governance at listed entities by empowering shareholders, streamlining the disclosure requirements for material events or information and strengthening compliance. The amendment shall come into force from 14th July, 2023.

Stricter timeline to fill the Vacancy of the Key Managerial Personnel (KMP) within 3 months from the date of the vacancy

Regulation 6(1) of LODR Regulations requires a listed entity to appoint a qualified company secretary as the compliance officer. Further, LODR Regulations cast various responsibilities and obligations on the Compliance Officer, CEO and CFO of listed entities.

Provisions under the Companies Act, 2013

Section 203(4) of the Companies Act, 2013 requires that the vacancy of whole-time key managerial personnel (Company Secretary, CFO, and CEO/MD/WTD/Manager) shall be filled up by the company within 6 months from the date of such vacancy.

There was no such timeline prescribed under the LODR therefore, the timeline of 6 months as provided under section 203 (4) of the Companies Act, 2013 was applicable to the listed entities also.

Amended Provisions

SEBI has inserted a regulation 6(1A) which defines that any vacancy in the office of the Compliance Officer shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date of such vacancy.

Further, SEBI has also inserted a new regulation 26A which states that any vacancy in the office of the Chief Executive Officer, Chief Financial Officer, Managing Director, Whole Time Director or Manager must be filled by the listed entity at the earliest and in any case not later than three months from the date of such vacancy.

Further, the listed entity shall not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person. (applicable to both regulations 6(1A) and 26A)

Need of the amendment

As in the case of the listed entities, additional functions and responsibilities are assigned to the Compliance Officer/CEO and CFO, therefore, a stricter timeline of 3 months in place of 6 months as specified under the companies act is introduced to ensure the smooth functioning of the company.

41. SEBI notifies framework for 'Execution Only Platform' for direct MF schemes:- *Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/86 dated 13.06.2023*

SEBI has introduced a framework for 'Execution Only Platforms' for direct plans of mutual fund schemes to protect investors. This regulatory framework aims to ensure investor convenience while addressing the risks associated with transactions involving non-client investors. The platform allows transactions in direct plans of mutual funds without the distributors. The circular also directs Stock Exchanges and AMFI (Association of Mutual Funds in India) to implement the necessary

arrangements and monitor the operations of EOPs(Execution Only Platform). SEBI mentions that for Category I EOPs, the requirements for on-boarding of investors shall be as specified by Association of Mutual Funds in India (AMFI), and adds that the responsibility of ensuring compliance with KYC requirements w.r.t. transactions executed through both categories of EOPs by investors in Mutual Funds, shall lie with the Asset Management Companies (AMCs).

Further, the framework exempts Category 2 EOPs from certain trading rules and requirements applicable to other segments. Moreover, the orders of investors placed through shall be routed directly to the AMCs and/or RTAs (Transfer Agents) authorized. The orders of investors placed through Category 2 EOPs shall be routed through the platforms provided by the Stock Exchanges. The order of the investors placed through both categories of EOPs shall be executed on an immediate basis. Under this mechanism, an entity desiring to provide execution-only services in direct plans can obtain registration either under Cat 1 EOP as an agent of AMCs or Cat 2 EOP as an agent of an investor registered as a stock broker. SEBI specifies that any entity desirous of obtaining registration as a Category 2 EOP shall ensure compliance with the following requirements, on a continuous basis:

(i) The entity has appointed a compliance officer;

(ii) The entity has appointed at least two qualified key managerial personnel with experience of at least three years each in the securities market;

(iii) The entity shall fulfil the "fit and proper person" criteria as prescribed under Schedule II of the Intermediaries Regulations.

This circular shall be applicable from 01.09.2023. It is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

42. SEBI eliminates demand draft for payment of fee in obtaining certified copies of orders/circulars:- *SEBI Circular No. SEBI/HO/LAD1/LAD1_DoP3/P/CIR/2023/88, Dated: 13.06.2023*

Earlier, SEBI vide Circular no. CIR/LAD/1/2019 dated April 4, 2019 issued a circular regarding the issuance of certified copies of orders and circulars. Now, SEBI has amended the circular, eliminating the requirement for accepting demand drafts as payment for the fees charged on the certified copies of orders and circulars.

Accordingly, the fees for certified copies of orders and circulars shall be paid through direct credit in the bank account of the Board using NEFT/RTGS/IMPS or online payment via SEBI payment gateway or any other mode specified by SEBI. Further, the confirmation of payments made electronically through NEFT/RTGS/IMPS modes or online payment using the SEBI payment gateway should be sent to the concerned department and also to e-mail id: tad@sebi.gov.in in the format prescribed.

43. SEBI comes out with a detailed regulatory framework for OBPs; allows them to offer additional products:- *Circular SEBI/HO/DDHS/POD1/P/CIR/2023/092, Dated: 16.06.2023*

Earlier, the SEBI vide Circular dated Nov 14, 2022 ('OBP Circular') provides for the registration and regulatory framework for Online Bond Platform Providers (OBP). It is noted that certain OBP are

not complying with it. Now SEBI has come out with detailed regulatory norms. Further, OBPs are now allowed to offer additional products like listed govt. securities, treasury bills, and listed sovereign gold bonds etc. on their platform. The circular shall be effective immediately. Earlier, they were allowed to offer limited products only.

44. SEBI issues guidelines on 'Anti-Money Laundering Standards and Combating the Financial Terrorism' for intermediaries:- *CIRCULAR SEBI /HO /MIRSD / MIRSDSECFATF/ P/CIR/2023/091, Dated: 16.06.2023*

SEBI has issued a circular amending the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) for market intermediaries. SEBI has highlighted the key modifications to existing AML norms, including the definition of a "group" as per amended rules, requirements for issuing policies and procedures for dealing with money laundering and terrorist financing, client verification procedures, registration of non-profit organizations on the DARPAN Portal etc.

45. MCA allows companies to file Form DPT-3 till July 31 without paying additional fees:- *MCA General Circular no 06/2023 dated 21 June 2023*

The MCA vide its General Circular dated 21 June 2023 has allowed companies to file Form DPT-3 (Return of Deposits) for the FY ended on March 31, 2023, without paying additional fees upto July 31, 2023. MCA Stated that the due date for filing the Form is June 30, 2023 and apprises that the move comes in view of the transition of MCA-21 Portal from Version-2 to Version-3.

46. RBI issues 8-point FAQs on Framework for Compromise Settlements and Technical Write-offs:- *RBI FAQs*

Vide Circular dated June 8, 2023, the RBI issued a comprehensive regulatory framework governing compromise settlements and technical write-offs covering all the regulated entities and in continuation of the same, RBI has issued the Frequently Asked Questions (FAQs) on Framework for Compromise Settlements and Technical Write-offs, inter alia clarifying that the provision w.r.t. "Compromise Settlement in Wilful Default and Fraud Cases" enabling banks to enter into compromise settlement in respect of borrowers categorised as fraud or wilful defaulter. The key extracts of the FAQs are reproduced below for the ready reference:

A. COMPROMISE SETTLEMENT IN WILFUL DEFAULT AND FRAUD CASES

1. Is it true that the Reserve Bank, vide the above circular, has introduced a new clause permitting lenders to enter into compromise settlement with borrowers classified as fraud or wilful defaulter?

No. The said provision enabling banks to enter into compromise settlement in respect of borrowers categorised as fraud or wilful defaulter is not a new regulatory instruction and has been the settled regulatory stance for more than 15 years.

2. Does the above RBI circular dilute the penal measures applicable to borrowers classified as wilful defaulter or fraud?

No. The penal measures currently applicable to borrowers classified as fraud or wilful defaulter in terms of the Master Directions on Frauds dated July 1, 2016 and the Master Circular on Wilful Defaulters dated July 1, 2015, respectively, remain unchanged and shall continue to be applicable in cases where the banks enter into compromise settlement with such borrowers. Such penal measures entail inter alia that no additional facilities should be granted by any bank/ FI to borrowers listed as wilful defaulters, and that such companies (including their entrepreneurs/ promoters) get debarred from institutional finance for floating new ventures for a period of five years from the date of removal of their name from the list of wilful defaulters. In addition, borrowers classified as fraud are debarred from availing bank finance for a period of five years from the date of full payment of the defrauded amount.

3. Does the minimum cooling period of 12 months prescribed in the above circular imply that even borrowers classified as fraud or wilful defaulter will be able to borrow fresh funds from the lenders after the cooling period?

No. The cooling period has been introduced as a general prescription for normal cases of compromise settlements, without prejudice to the penal measures applicable in respect of borrowers classified as fraud or wilful defaulter as per the Master Directions on Frauds dated July 1, 2016 and the Master Circular on Wilful Defaulters dated July 1, 2015, respectively, as mentioned at (2) above.

4. What are the safeguards to ensure that the provisions of compromise settlement with borrowers classified as fraud or wilful defaulter, are not mis-utilized?

Compromise settlement is not available to borrowers as a matter of right; rather it is a discretion to be exercised by the lenders based on their commercial judgement. The prudential guidelines provide sufficient safeguards with regard to such settlements considered by the lenders:

- All such decisions are required to be taken by lenders as per their Board approved policies, instead of adopting an ad-hoc approach in each case;
- The circular further strengthens the regulatory guidance by mandating that all such cases of compromise settlement involving borrowers classified as fraud or wilful defaulter must be approved by the Board;
- Such settlements shall be without prejudice to the criminal proceeding underway or to be initiated, if under consideration of the lenders against such borrowers;
- As already mentioned, the extant penal provisions continue to remain applicable in such cases.
- Wherever recovery proceedings are pending before a judicial forum, any settlement arrived at with the borrower shall be subject to obtaining a consent decree from the concerned judicial authorities.
- The Boards of lenders have been entrusted with the oversight of the overall trends in approvals of all compromise settlements, including specifically the breakup of accounts classified as fraud, red-flagged, wilful defaulter and quick mortality accounts. These guidelines will ensure greater transparency of the whole process.

5.From a public policy perspective, what is the rationale for permitting lenders to enter into compromise settlement with borrowers classified as fraud or wilful defaulter?

The primary regulatory objective is to enable multiple avenues to lenders to recover the money in default without much delay. Apart from the time value loss, inordinate delays result in asset value deterioration which hampers ultimate recoveries. Compromise settlement is recognized as a valid resolution mechanism under the Prudential Framework on Resolution of Stressed Assets dated June 7, 2019. The imperatives for lenders are no different when it comes to recovery from borrowers classified as fraud or wilful defaulter. Continuing such exposures on the balance sheets of the lenders without resolution due to legal proceedings would lock lenders' funds in an unproductive asset, which would not be a desirable position.

6. As per Prudential Framework for Resolution of Stressed Assets dated June 7, 2019, lenders are not permitted to restructure borrower accounts classified as fraud or wilful defaulter, except in case of change in ownership. Why a different treatment is prescribed for compromise settlements for such borrowers?

Restructuring in general entails the lenders having a continuing exposure to the borrower entity even after restructuring and hence, in case of borrowers classified as fraud or wilful defaulter, permitting lenders to continue their credit relationship with the borrower entity would be fraught with moral hazard. On the other hand, a compromise settlement entails a complete detachment of the lender with the borrower. Therefore, permitting lenders to settle with the borrowers as per their commercial judgement would enhance recovery prospects.

B. TECHNICAL WRITE OFF

7. The circular also permits the lenders to undertake technical write-offs of amount outstanding relating to borrowers in default. Doesn't such a practice encourage default behavior, as the costs of default are borne entirely by the lenders and defaulting borrowers do not face any consequences?

No. As defined in the circular, technical write-off refers to cases where the NPAs remain outstanding at borrowers' loan account level, but are derecognised by the lenders only for accounting purposes. Technical write-off is a normal banking practice undertaken by the lenders to cleanse the balance sheets of bad debts which are either considered unrecoverable or whose recovery is likely to consume disproportionate resources of the lenders. However, such technical write-offs do not entail any waiver of claims against the borrower and thus the lenders' right to recovery is not undermined in any manner. Therefore, the defaulting borrowers are not benefited in any manner and their legal obligation as well as the costs of such defaults for them remain unchanged visà-vis the position prior to technical write-offs. The circular only provides clarity on definition of technical write-off and a broad guidance on the process to be followed by the lenders for technical write-offs, which will ensure consistency in the approach followed by various lenders.

C. GENERAL:

8. What are the key objectives that the above circular seeks to achieve?

The circular is intended to achieve the following objectives:

- It rationalises the existing regulatory guidance to banks on compromise settlements, consolidating various instructions issued over the years. It also tightens some of the related provisions and ensures greater transparency.

- By providing a clear regulatory framework, it enables other regulated entities, particularly cooperative banks, to undertake compromise settlements as part of the normal resolution efforts.
- It provides clarity on definition of technical write-off and provides a broad guidance on the process to be followed by the regulated entities for technical write-offs, which is a normal banking practice.
- As a disincentive to both the lenders and the borrowers, it introduces the concept of cooling period for normal cases of compromise settlement during which the lender undertaking settlement shall not take any fresh exposure on the borrower entity. In case of borrower accounts classified as wilful defaulter or fraud, the debarment to obtain fresh finance, as explained at (2) above, will apply.

47. High Court stays operation of RBI Master Directions on fraud, till September 11:- *S.S. Hemani vs. The RBI & Ors. dated 19.06.2023*

In a batch of petitions challenging the actions taken by banks in pursuance of Frauds (Classification and Reporting by Commercial Banks and Select FI) Directions, 2016 ('RBI directions') issued by the Reserve Bank of India ('RBI'), the Bombay High Court imposed stay to restrict actions by banks and their in-house committees in furtherance of the Master Circular.As pointed out by the Court in the instant matter, the Supreme Court had considered the said RBI directions in SBI v. Rajesh Agarwal, 2023 SCC OnLine SC 342 and concluded regarding classification of an account as fraud being akin to blacklisting and opportunity of being heard by following audi alteram partem.

Thereafter, the State Bank of India ('SBI') filed an application apprehending that the Supreme Court's judgment in SBI v. Rajesh Agarwal *(supra)* may be interpreted to mean that mandatory personal hearing, the SC pointed at the specific paragraphs to be taken as operative directions and disposed of the matter. The Court noted that all the petitions in the instant matter complained against the violation of principles of natural justice while following RBI directions, not being afforded the opportunity of hearing, not receiving copies of material relied upon, etc. The Court found it necessary to issue Rule and grant stay against further actions by banks in furtherance of Master Circular for impugned RBI directions till 11-09-2023. The stay would restrict actions by banks and their in-house committees under the RBI directions in question.

It further explained that "investigating agencies are at liberty to file and proceed with FIRs without reference to any findings by the bank under the Master Circular in question. Equally, all remedies available in law to private parties remain unaffected by this order and may be pursued." The Courts also kept the Banks at liberty to rescind, withdraw or cancel any orders already passed under the RBI directions which may be inconsistent with aforesaid Supreme Court's decision. The Banks may also re-initiate the process consistent with the said decision. Since the Master Circular of RBI directions was not struck down by the SC, the HC did not stay the operation of the said directions.

48. Supreme Court denounces Article 32 pleas challenging vires of PMLA Sec. 50 and 63, despite prior decision affirming their validity:- *Pinki Singh vs UOI dated 30.05.2023*

The Apex Court deprecated the trend of accused in money laundering cases filing Article 32 petitions before the top court directly challenging summons or seeking bail in the guise of challenging the provisions of the Prevention of Money Laundering Act (PMLA Act). The Supreme Court had upheld the ED's powers related to arrest, attachment of property involved in money

laundering, search, and seizure under the PMLA in its July 2022 judgment in Vijay Madanlal Choudhary v. Union of India.

"The Court is constrained to observe that despite the Vijay Madanlal judgment there is a trend prevailing in writ petitions filed before this Court under Article 32 challenging the constitutional validity of Sections 50 and 63 and other provisions of the PMLA, which has been decided finally and then seek consequential relief. These reliefs are by bypassing other forums which are open to petitioners," the Court said. The observations came in a cases wherein two Chhattisgarh government officials implicated in the liquor/excise scam in the State, the batch of petitions moved the top court for relief while challenging the PMLA. The bench also remarked the apex court is becoming an alternative forum. Instead of going to the high court and challenging the provisions of the law there, the accused were contesting the summons in the Supreme Court, it said.

49. RBI expands remittance scope to IFSCs under LRS; allows residents to make study-related remittances in IFSCs:- *Circular No.6 AP (DIR Series) dated June 22, 2023 by RBI*

At present, remittances to IFSCs under the Liberalized Remittance Scheme (LRS) are limited to investments in securities. However, the Central Government issued a gazette notification on May 23, 2022, directing Authorized Persons to facilitate remittances for resident individuals specifically for the purpose of 'studies abroad.' This enables individuals to make payments for their foreign university fees or fees to foreign institutions in IFSCs, allowing them to pursue courses (specified in gazette notification). These directions have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999). It's important to note that these instructions do not undermine any necessary permissions or approvals required under other applicable laws.

50. SEBI publishes Master Circular on scheme of arrangement by listed entities:- *SEBI Master Circular dated 20th June 2023*

SEBI notifies application for relaxation under Rule 19(7) of the Securities Contracts (Regulations) Rules (SCRR) that permits SEBI at its own discretion or on the recommendation of a recognized Stock Exchange, to waive or relax the strict enforcement of any or all the requirements with respect to listing prescribed by these Rules, additionally, publishes Master Circular on Scheme of Arrangement by Listed Entities.

Market Regulator specifies that the provisions of this Circular shall not apply to schemes which solely provide for merger of a wholly owned subsidiary or its division with the parent company, however, directs that such draft schemes shall be filed with the Stock Exchanges for the purpose of disclosures and the Stock Exchanges shall disseminate the scheme documents on their websites. W.r.t. requirements before the Scheme of Arrangement is submitted for sanction by the NCLT, Regulator lays down that listed entities shall choose 1 of the Stock Exchanges having nationwide trading terminals as the designated Stock Exchange for the purpose of coordinating with SEBI, and also delineates the list of documents to be submitted to the Stock Exchange inter alia including Draft Scheme of Arrangement, Valuation Report, Report of Audit Committee recommending the Draft Scheme, fairness opinion by a SEBI Registered merchant banker etc.

On the eligibility criteria for companies seeking relaxation under Rule 19(7) of the SCRR, SEBI stipulates that:-

- the equity shares sought to be listed are proposed to be allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity) pursuant to a scheme of reconstruction or amalgamation sanctioned by NCLT u/s 230-234 of the Companies Act, and
- at least 25% of the post-scheme paid up capital of the transferee entity shall comprise of shares allotted to the public shareholders in the transferor entity etc.

Further, also specifies that a listed entity, desirous of listing of its warrants without making an initial public offer of warrants, may make an application to the Board under Rule 19(7) seeking relaxation from strict enforcement of Rule 19(2)(b), subject to certain conditions specified in this regard.

https://www.sebi.gov.in/legal/master-circulars/jun-2023/master-circular-on-scheme-of-arrangement_72839.html

51. SEBI issues informal guidance on BRSR applicability to entity in top 1000 till FY 21:- *SEBI Informal Guidance in the matter of M/s Nectar Lifesciences Ltd. dated 21st June 2023*

Vide Circular dated May 10, 2021, SEBI notified the format of the BRSR along with a guidance note to enable companies to interpret the scope of disclosures, and mandated filing of BRSR w.e.f. FY 2022-2023 for the top 1000 listed companies by market capitalization.

The informal guidance was issued by Mr. Raj Kumar Das in the matter of Nectar Lifesciences Ltd.

SEBI issues Informal Guidance to Nectar Lifesciences Ltd. (Applicant) inter alia clarifying on the applicability of the Business Responsibility and Sustainability Reporting (BRSR). Perusing Reg. 34 r.w. Reg. 3(2) of the LODR Regulations and the BRSR Circular.

Market Regulator highlights that till FY 2021-22 it was mandatory for the top 1000 listed entities on the basis of market capitalization, to submit a Business Responsibility Report (BRR) in their annual report, and thereafter, from FY 2022-23, such listed entities are required to submit BRSR.

Further, Regulator underscores that by virtue of Reg. 3(2), any listed entity which is amongst the top 1000 listed entities in the FY ending on March 31, 2022 viz. FY 2021-22, or any financial year thereafter, shall continue to submit the BRR or BRSR, as the case may be, even for the FYs wherein such entities fall below the threshold of the top 1000 listed entities by market capitalization. Clarifies that since Reg. 3(2) was inserted w.e.f. May 5, 2021, in the context of Reg. 34(2)(f), it shall apply only to entities who are in the top 1000 listed entities as computed on March 31, 2022.

In light of Applicant's submission that it had been in the list of top 1000 listed entities based on market capitalization as on March 31, 2021, SEBI elaborates that Applicant's obligation under the aforesaid provisions was only limited to the submission of BRR for that FY, moreover, noting that applicant had not been on the list of top 1000 listed entities based on market capitalization as on March 31, 2022 as well as March 31, 2023, SEBI states that the requirement under Reg. 34(2)(f) and the proviso thereof had not become applicable to the Applicant. Accordingly, stating that the Applicant shall not be required to continue the submission of BRR since the Applicant was in the top 1000 listed entities only in FY ending on March 31, 2021 and not thereafter, SEBI concludes that Applicant shall not be required to submit the BRSR under Reg. 34(2)(f) of the LODR Regulations.

https://www.sebi.gov.in/sebi_data/commondocs/may-2023/Nectar_lifescience_IG_p.pdf

52. AIFs to obtain consent of 75% of investors by value their investment for launching liquidation scheme:- *Circular No. SEBI/HO/AFD/PoD-I/P/CIR/2023/098, Dated 21.06.2023*

Recently, AIFs Regulations have been amended and notified to provide flexibility to AIFs to deal with investments of their schemes which are not sold, by selling such investments to a new scheme of the same AIF (Liquidation Scheme). Now, the SEBI has notified amendments to AIF Regulations in relation to the liquidation scheme. If an AIF chooses to launch Liquidation Scheme, it is required to obtain the consent of 75% of investors by the value of their investment in the original scheme.

53. SEBI prescribes a standardised approach for valuation of investment portfolio of AIFs:- *Circular No. SEBI/HO/AFD/PoD/CIR/2023/97, Dated: 21.06.2023*

As per Regulation 23(1) of the SEBI (Alternative Investment Fund) Regulations, AIFs are required to carry out the valuation of their investments in a manner specified by SEBI. In order to provide clarity, SEBI has clarified that the valuation of securities for which valuation norms have been prescribed under SEBI (Mutual Funds) Regulations, 1996 must be carried out as per these regulations.

Further, for securities that do not have specific valuation norms prescribed, the valuation shall be carried out as per valuation guidelines endorsed by an AIF industry association. To be considered eligible, the AIF industry association must represent at least 33% of the number of SEBI-registered AIFs in terms of membership. Also, the eligible AIF industry association shall endorse appropriate valuation guidelines after taking into account the recommendations of Alternative Investment Policy Advisory Committee of SEBI.

54. SEBI introduces a trading preference format for clients across different stock exchanges:- *Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/95; dated: 21.06.2023*

SEBI has prescribed a standard format for seeking the trading preference of clients for the same segment in different exchanges. This is done to ensure that clients are permitted to access all the stock exchanges in which the stock brokers are registered for the same segment. Currently, clients need to provide separate authorisations/letters in case they want to trade on different stock exchanges for the same or different segments. The circular shall be effective from 01.08.2023.

Further, all stock brokers are mandated to register their new clients on all the active stock exchanges after obtaining the trading preferences as per the standard format. For existing clients, the stock brokers are mandated to offer them access to all the active stock exchanges for the segments already opted by them, as a default mode, within three months from the effective date of the circular and inform their respective clients through email / SMS.

55. SEBI prescribes due dates for dematerialisation of AIF units based on corpus size:- *Circular No. SEBI/HO/AFD/PoD1/CIR/2023/96, Dated: 21.06.2023*

As per Regulation 10(aa) of the AIF Regulations, AIFs are required to issue units in dematerialised form, subject to the conditions specified by SEBI. Now, SEBI has directed all the AIFs schemes with

a corpus of not less than Rs 500 Cr. to dematerialise its units by 31.10.2023. For AIF schemes with a corpus less than Rs 500 Cr., the due date is 30.04.2024.

Further, from 01.11.2023, units can only be issued in dematerialised form for schemes with a corpus of not less than Rs 500 cr. For AIF schemes with a corpus of less than Rs 500 Cr, units can only be issued in dematerialised form from 01.05.2024.

CROSS BORDER

1. UAE releases Corporate Tax 'Transitional Rules' for adjustments of pre-first Tax Period gains:- *News Report*

The UAE Ministry of Finance has issued a set of 'transitional rules' that businesses need to factor in for their corporate tax preparations. These guidelines give a framework on a taxable person's opening balance-sheet under the Corporate Tax Law. The UAE begins its corporate tax regime from 1 June 2023. The key highlights of the transitional rules are as follows:

- The Ministry of Finance has outlined transitional rules allowing businesses in the UAE to adjust the tax treatment of certain assets and liabilities before the corporate tax law takes effect on June 1st.
- These rules apply to immovable property, intangible assets, and financial assets and liabilities held by companies prior to the implementation of the new law.
- Businesses must make the necessary adjustments when submitting their initial tax return as per the rules specified, and these changes are generally permanent, except in special circumstances.
- The ministry's decision takes into account ownership history, considering assets and liabilities owned by the company or other entities within the same business group.
- The aim of these transitional rules is to facilitate a smooth transition for businesses from the pre-implementation period to the post-implementation period of the corporate tax law, ensuring fairness and transparency in determining the opening balance sheet.
- The Ministry of Finance has also provided additional flexibility for the property sector, allowing companies with immovable property to choose between a time apportionment method or a valuation method for relief on an asset-by-asset basis.
- In certain scenarios, businesses holding shares in other companies based on a historical cost basis can adjust their taxable income when selling these shares after the tax law comes into effect.

The UAE introduced a federal corporate tax last year with a standard statutory rate of 9 percent, applicable from June 1st, 2023. Small businesses with revenue of AED 3 million or less can benefit from a corporate tax relief program. Recently, the ministry issued ministerial decisions clarifying exemptions and procedures for financial statement preparation, consolidation within a tax group, exemption of pension funds and social security funds from corporate tax, and requirements for claiming participation exemptions.

2. UAE prescribes adjustments in 'accounting income' for determining Corporate Tax 'income':- *UAE M.O.F Ministerial Decision No.134/2023*

The Ministry of Finance in the United Arab Emirates (UAE) has released Ministerial Decision No. 134 of 2023, which provides the General Rules for determining taxable income under the Corporate Tax Law. The decision outlines several adjustments that need to be made to the accounting income in order to determine taxable income, specifically as per Article 20(2)(i) of the Corporate Tax Law.

The adjustments specified in the decision include:

1.) Including any realized or unrealized gains and losses that are reported in the Financial Statements but not subsequently recognized in the statement of income.

2.) Replacing the effect of the Equity Method of Accounting with the effect of the Cost Method of Accounting if the Cost Method is allowed under the Accounting Standards.

3.) Making adjustments to reflect gains and losses on a realization basis, if elected by the taxable person.

The decision also prescribes adjustments to be made in relation to transactions with related parties, transfers with a qualifying group, business restructuring relief, and for partners of an unincorporated partnership.

Furthermore, the decision states that any expenditure not meeting the conditions prescribed under Chapter IX (Deductions) shall not be deductible under Article 20(2)(i). Similarly, no deduction shall be allowed for depreciation, amortization, or other changes related to capitalized expenditure if such expenditure would not have been deductible had it been an expenditure that is not capital in nature. It clarifies that if capital expenditure has not been deducted, it shall be deductible from gains or losses upon the realization of the asset or liability.

Regarding the election of the "realization basis" of income recognition, the decision specifies that the election should be made by the taxable person during the first Tax Period and shall be deemed irrevocable, except under exceptional circumstances and with the approval of the Authority.

3. OECD updates Information Exchange Standards with Crypto Reporting Framework & CRS amendments:- *OECD Press release*

OECD releases updated International Standards for Automatic Exchange of Information in Tax Matters, includes the Crypto-Asset Reporting Framework (CARF) and amendments to the Common Reporting Standard (CRS), along with associated Commentaries and exchange of information frameworks. The CARF provides for the automatic exchange of tax relevant-information on crypto-assets and was developed to address the rapid growth of the crypto-asset market and to ensure that recent gains in global tax transparency are not gradually eroded while the CRS was amended to bring certain electronic money products and central bank digital currencies in scope. The CARF consists of three distinct components:

- Rules and related Commentary that can be transposed into domestic law to collect information from Reporting Crypto-Asset Service Providers,
- a Multilateral Competent Authority Agreement on Automatic Exchange of Information pursuant to the CARF (CARF MCAA) and related Commentary; and
- an electronic format (XML schema) to be used by Competent Authorities for purposes of exchanging the CARF information, as well as by Reporting Crypto-Asset Service Providers to report CARF information to tax administrations (to be published separately).

Comprehensive review of CRS has resulted in amendments to bring new financial assets, products, and intermediaries within its scope, because they are potential alternatives to traditional financial products, while avoiding duplicative reporting with that foreseen in the CARF, further amendments have also been made to enhance the reporting outcomes under the CRS, including through introduction of :

- more detailed reporting requirements,
- the strengthening of the due diligence procedures,
- the introduction of an optional Non-Reporting Financial Institution category for Investment Entities that are genuine non-profit organisations and
- the creation of a new Excluded Account category for capital contribution accounts.

4. OECD launches peer-to-peer support system on Two Pillars for developing countries:- *OECD*

The OECD recently made an announcement regarding the inaugural virtual meeting of the Forum on Tax Administration Pillar Knowledge Sharing Network. This network has been established with the objective of providing support to developing countries in their efforts to implement the "two-pillar" solution, which addresses the tax challenges arising from the digitalization of the economy. The meeting, held on 13 June 2023, marks the beginning of a series of peer-to-peer knowledge-sharing events, where experts from tax administrations in "early implementer" jurisdictions will offer valuable insights and practical advice on the administrative and implementation aspects of the Two-Pillar Solution. Further, the meeting saw a remarkable turnout, with over 250 delegates from more than 70 countries and jurisdictions in attendance. The plan is to organize additional meetings throughout the year to continue fostering knowledge exchange and collaboration.

5. OECD rolls out new tax standards for digital currencies and CBDCs:- *News Report*

OECD has recognized the need for clear tax guidelines in the rapidly evolving digital currency landscape and has taken steps to provide clarity and consistency in taxation across jurisdictions. OECD's new tax standards are designed to address the unique challenges posed by digital currencies and CBDCs. With the increasing adoption and use of cryptocurrencies, governments worldwide have been grappling with the tax implications of these digital assets. The new guidelines aim to bring greater transparency and coherence to the taxation of digital currencies, thereby ensuring that tax laws keep pace with technological advancements. OECD's tax standards emphasize the importance of properly classifying digital currencies for tax purposes. The guidelines encourage countries to adopt a clear and consistent approach when determining the tax treatment of digital currencies, such as whether they should be considered as property, currency, or a new asset class altogether. This classification will help establish the appropriate tax obligations and ensure that digital currency transactions are subject to the relevant tax regulations.

Additionally, the OECD's tax standards also cover CBDCs, which are digital representations of a country's fiat currency issued and regulated by its central bank. As CBDCs gain traction globally, the tax treatment of these digital currencies becomes crucial. The OECD's guidelines aim to provide clarity on how CBDCs should be taxed and ensure that taxation of these digital assets aligns with traditional fiat currencies. Also, OECD's tax standards address other critical aspects, such as the determination of tax residency for digital currency holders and the documentation and reporting requirements for digital currency transactions. These guidelines seek to enhance cross-border tax

cooperation and facilitate the exchange of information between tax authorities to combat tax evasion and promote tax compliance in the digital currency space.

https://coingeek.com/oecd-rolls-out-new-tax-standards-for-digital-currencies-and-cbdcs/

6. US IRS introduces new review procedures for APAs:- *Article dated 13th June 2023*

The IRS Advance Pricing Agreement (APA) program has long been a valuable avenue for taxpayers to achieve certainty in transfer pricing (TP) matters. Recently, the program underwent updates aimed at improving its effectiveness. The new review procedures involve collaboration between the Advance Pricing and Mutual Agreement program (APMA) and the IRS Transfer Pricing Practice, with APMA having the final say on APA acceptance. These consultations seek to ensure that each case is handled through the most appropriate workstream, such as the International Compliance Assurance Program (ICAP) or joint audits, when applicable. Taxpayers are advised to articulate why the APA program is the optimal choice for their circumstances. The significance of the prefiling process has also heightened, allowing taxpayers to obtain IRS feedback on the viability of their APA submission. However, the potential for additional information requests may prolong the prefiling timeline. Overall, these updates signify the IRS's commitment to enhancing the APA program and addressing taxpayers' requirements for clarity and efficiency in securing TP certainty.

https://www.internationaltaxreview.com/article/2bshxv7dqxwuj6jwm2ry9/local-insights/irs-introduces-new-review-procedures-for-apas

7. UK publishes draft technical guidance on Pillar Two rules:- *HM Revenue & Customs, UK Government dated 15 June 2023*

The UK government has published partial draft technical guidance on multinational top-up tax and domestic top-up tax following their introduction in the Spring 2023 Finance Bill. These measures constitute the UK's adoption of a qualifying Income Inclusion Rule and a Qualifying Domestic Minimum Top-up Tax (part of the Pillar 2 or GloBE rules).

Multinational top-up tax is a new tax on multinational enterprise groups with annual revenue of €750 million or more. A top-up tax will be charged on UK parent members when a subsidiary is located in a non-UK jurisdiction, and the group's profits arising in that jurisdiction are taxed at a rate below the minimum effective tax rate of 15%. Domestic top-up tax applies the rules of multinational top-up tax to the UK operations of groups and certain entities to ensure that UK entities will be taxed at the minimum rate. The guidance provides additional information on which groups will be in scope and on how the taxes will be administered and charged. HMRC welcomes comments from stakeholders on this draft guidance by 12th September 2023.

https://www.gov.uk/government/consultations/draft-guidance-multinational-top-up-tax-and-domestic-top-up-tax

8. Australia considers Minimum Tax and Intangibles Measure Interaction:- *News Report*

Australia is actively exploring the implementation of a minimum tax regime in conjunction with measures targeting the taxation of intangible assets. This move aligns with global efforts to ensure a fair distribution of tax burdens among multinational corporations. By introducing a minimum tax and focusing on intangible assets, Australia aims to prevent profit shifting and tax avoidance

strategies employed by multinational companies. The country's tax authorities are engaging with international partners and organizations to establish effective frameworks that address these concerns. This development underscores Australia's commitment to international tax reforms and its determination to safeguard its tax base while promoting global tax fairness.

9. Switzerland gives constitutional nod to global minimum tax, ordinance expected:- *News Report*

Switzerland votes on constitutional amendment for the implementation of Global Minimum Tax with 78.45% of the votes in its favor. The global minimum tax was proposed to be introduced for large, internationally active corporate groups and there will be no change for other companies. The Swiss Federal Constitution will provide a basis for explicitly permitting such unequal treatment. The threshold of 750 million Euro for applicability of minimum tax ensures that approximately 99% of companies in Switzerland are not directly affected by the reform and will continue to be taxed as before. The ordinance would introduce a 'supplementary tax', leviable to make good the shortfall of minimum tax and would apply until it is superseded by a federal law, which is to be presented by the Federal Council to the Federal Parliament.

While the financial impact of the minimum tax is unclear, annual receipts from the supplementary tax are estimated to be approximately CHF 1 to 2.5 billion initially. 75% of the receipts from the supplementary tax will go to those cantons where large companies were previously taxed at a lower rate, with some of the receipts therefrom flowing to the fiscal equalization system, thus benefiting all other cantons as well and the Confederation will be entitled to 25% of receipts, with some receipts flowing to national fiscal equalization system and remainder to be utilized by the federal government to promote locational appeal throughout Switzerland. The Federal Department of Finance also releases Q&A on the implementation of the OECD/G20 minimum tax rate.

10. EU executive proposes new withholding tax rules to attract investors:- *News report*

The European Commission on 19-Jun-2023 proposed changes to the way investors pay withholding tax in the European Union, to attract more cross-border trade in securities and help develop the bloc's capital market. The Commission's proposal is to make sure cross-border investors pay the correct amount of withholding tax from the start or that they get any refund to which they are entitled quickly.

The following proposed actions can make life easier for investors, financial intermediaries, and national tax authorities:

— Common EU digital tax residence certificate
— Two fast-track procedures complementing the existing standard refund procedure :

- Under the "relief at source" procedure, the tax rate applied at the time of payment of dividends or interest is directly based on the applicable rules of the applicable income tax treaty.
- Under the "quick refund" procedure, the initial payment is made taking into account the withholding tax rate of the member state in which the dividends or interest is paid, but the refund for any overpaid taxes is granted within 50 days from the date of payment.

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